

## EXHIBIT 4

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IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

MARK I. SOKOLOW, ET AL.,

vs. Civil Action No.  
1:04-cv-00397-GBD

THE PALESTINE LIBERATION  
ORGANIZATION, ET AL.,

**Defendants,**

DEPOSITION OF JOHN B. QUIGLEY

Columbus, Ohio

Thursday, October 10, 2013

REPORTED BY:

KAREN SUE GIBSON

REF. NO.: 10461

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<p>1       A I don't remember when I started teaching 2 it exactly, but it was after 1983. 3       Q Okay. At some point after 1983. Was it 4 within five years, roughly? 5       A Probably, yes, yes. 6       Q And had you had any background in the 7 Middle East Conflict before you started teaching that 8 course? 9       A Well, it's my background in international 10 law. It's like a subset of international law. 11      Q Okay. So you had studied that conflict 12 specifically in your capacity as a professor or 13 student of international law? 14      A That's right. 15      Q And how had you studied it? 16      A By reading and studying the relevant 17 treaties and documents. 18      Q All right. Had you -- had you written 19 anything on it at that point? 20      A I think the first major thing I wrote 21 would have been a book that was published around 22 1989. 23      Q What was the book? 24      A The title is "The Challenge" -- 25 "Palestine and Israel: A Challenge to Justice."</p>	<p>1 states when obligations are violated. 2       Q Okay. And what do you mean by states? 3       A The states in the sense of nation states, 4 states of the world. 5       Q And I am sure we are going to get much 6 more into this but what is your -- what's your 7 definition of a nation state or a state of the world 8 as you said? 9       A Well, it's an entity that's accepted in 10 the international community, accepted by other states 11 as having that status. 12      Q Okay, okay. So you -- before you began 13 teaching the Middle East Conflict seminar, you got 14 acquainted through reading and studying all these 15 relevant documents we went through. Do you have any 16 other experience subsequent to that other than the 17 teaching and the -- and what you did to prepare for 18 teaching the course? Do you have any other 19 experience with the Middle East Conflict? 20      A Any other experience? I mean, that's the 21 way that I, you know, developed expertise on the 22 subject was by teaching. 23      Q So just more of reading and studying the 24 relevant documents. 25      A Yes, yes.</p>
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<p>1       Q Okay, okay. And you said that your 2 experience was from reading and studying relevant 3 treaties and the like. What were the specific -- if 4 you recall, the specific treaties and reading that 5 you did to become acquainted with the conflict before 6 you started teaching that course? 7       A Well, it would have been the 8 international documentation relevant to the conflict 9 going back to the time of the First World War, the 10 Balfour Declaration of Britain, the mandate of the 11 League of Nations over Palestine, the activity at the 12 United Nations when the United Nations came into 13 existence. 14      Q Any others that you remember? 15      A Those would be the major ones. 16      Q Okay. And what do you mean -- what do 17 you mean specifically -- this is going back all the 18 way to the beginning. What do you mean exactly by 19 the field of international law? What does that 20 encompass when you use that term? 21      A Well, my focus is what we call public 22 international law, the law between states -- 23      Q Okay. 24      A -- customary international law, the law 25 of treaties, obligations among states, remedies for</p>	<p>1       Q Okay. Have you ever visited Israel? 2       A Yes. 3       Q Okay. How many times have you visited? 4       A Half a dozen, approximately. 5       Q Okay. When did you visit? When were 6 those? 7       A 1977. 8       Q Testing your memory here, I know. 9       A Right. Several times during the 1980s, I 10 don't remember the exact years, and several times 11 during the 1990s as well, and several times during 12 the first decade of this century. 13      Q Okay. And do you speak Hebrew? 14      A No. 15      Q Okay. And what was the purpose of those 16 visits? I mean, we can take them one by one. In 17 1977, why did you go? 18      A That was a visit with a group of lawyers 19 that were there to just get a general idea of the 20 situation from the standpoint of legal issues. 21      Q Okay. And was it a conference? 22      A Not a conference, it was just a visit, a 23 group of lawyers. 24      Q And was the group of lawyers all from the 25 United States, or were they from around the world?</p>

5 (Pages 14 to 17)

<p style="text-align: right;">Page 42</p> <p>1 Q Okay. I think that -- does that exhaust 2 in your recollection your visits to Israel? 3 A Yes, it does. 4 Q Okay. Have you visited the West Bank 5 and/or Gaza separately from your visits to Israel 6 that we just discussed? 7 A Well, the visits have included -- 8 Q Right. 9 A -- the other territories. 10 Q But have you ever been to the West Bank 11 and not Israel? 12 A No. I think I have been in Israel each 13 time. 14 Q And the same is true of Gaza? 15 A Yes. 16 Q So we've covered all these from the '70s 17 through the -- we've covered all your visits to that 18 area of the Middle East. 19 A Uh-huh. 20 Q And have your -- other than developing 21 more knowledge in this area have your views on any 22 issues transformed in any specific ways through those 23 visits and through that experience? 24 A Are you asking about a particular issue 25 or?</p>	<p style="text-align: right;">Page 44</p> <p>1 A Well, I've probably gained more knowledge 2 about how these issues play out; but, you know, my 3 basic views on them have not fundamentally changed. 4 Q Okay. And is there a difference between 5 I guess the way these things play out and sort of 6 the -- your experience on the ground in the areas as 7 opposed to I guess the way you've -- you've gained 8 knowledge through reading and your studies here in 9 the United States? 10 A Well, I mean, when you talk to people who 11 are living through the conflict, it gives you a sense 12 of the urgency and the need for some resolution. I 13 would say that's the major thing that I've gained by 14 speaking with people on both sides of the conflict. 15 Q Okay, okay. So to recap, and we have 16 been talking about your professional career, since 17 graduating law school your career has consisted 18 primarily of the fellowships and the academic 19 professor experiences you've held after law school? 20 A Yes. 21 Q And currently you are still a professor 22 at Ohio State? 23 A Yes. 24 Q And now a professor emeritus? 25 A Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q I want -- well, okay. So, for example, 2 we talked about the law of belligerent occupation. 3 Has your view on that changed at all through your 4 initial visit to Israel and to the present? 5 A I wouldn't say my basic view has changed, 6 that is, my view was that Israel holds the West Bank 7 in a status called belligerent occupation but that 8 has been the view of the Supreme Court of Israel for 9 many years so my view hasn't changed. 10 Q Okay. And what do you mean by 11 belligerent occupation? 12 A It's the status where an army is in 13 occupation of -- of territory that is outside the 14 sovereignty of the state that that army represents. 15 Q And the territory we are talking about 16 here is the West Bank and Gaza? 17 A Yes. 18 Q And any additional territory? 19 A Well, the Golan Heights as well would be 20 under belligerent occupation by Israel. 21 Q Okay. So that was what I meant by have 22 your views on these issues developed or changed at 23 all. Can you think of any other specific issues 24 related to the conflict in the Middle East that have 25 changed or developed over the years?</p>	<p style="text-align: right;">Page 45</p> <p>1 Q Do you have any other experience with 2 the -- related to the Middle East Conflict other than 3 what we've already discussed? 4 A I think that's the totality of it. 5 Q Okay. Are you a U.S. qualified lawyer? 6 A Yes. 7 Q Okay. So you are admitted to -- I think 8 this is on your CV. You are admitted to several 9 bars. Massachusetts is one; is that right? 10 A Massachusetts isn't active. 11 Q It isn't active, okay. And is Ohio 12 active? 13 A Yes. 14 Q And you have been a member of the Ohio 15 Bar for -- since 1973? 16 A Yes. 17 Q Okay. And then the United States 18 District Court for the Southern District of Ohio, is 19 that membership active? 20 A Yes. 21 Q Okay. That's been active since 1976? 22 A Yes. 23 Q Okay. And what about the Sixth Circuit? 24 A Yes. I was admitted to practice there as 25 well.</p>

12 (Pages 42 to 45)

1 Q Okay. Your comments --  
 2 A Of course, I am making a conclusion that  
 3 Palestine is a state. I mean, it's possible that  
 4 someone else could cite sources that go in the other  
 5 direction that I didn't mention here. I mean, I  
 6 would have responses to those but -- but there may be  
 7 sources that others would cite that I didn't cite  
 8 here.

9 Q Sure. You were compensated for providing  
 10 this report, correct?

11 A Yes.

12 Q And what was your compensation?

13 A \$250 an hour.

14 Q Okay. Is that the same hourly rate for  
 15 testimony? Is \$250 also the rate that you're  
 16 receiving for providing testimony, or is it exclusive  
 17 to your writing of the report?

18 A It's the same.

19 Q Okay. And should you provide testimony  
 20 at trial, is that also the hourly rate that you'll  
 21 receive for that work?

22 A I suppose so.

23 Q How much time did you spend writing the  
 24 report?

25 A I don't remember. It's in a document

1 A Well, the history of the issue, how it  
 2 developed after the breakup of the Ottoman Empire,  
 3 the subsequent treatment of the issue through the  
 4 League of Nations and the United Nations, and then  
 5 the issues that are controversial as between the  
 6 parties presently.

7 Q In -- in the affidavit you provided for  
 8 the Hernandez case, you also claimed your expertise  
 9 was on international law generally, correct? Exhibit  
 10 4, I think.

11 A Uh-huh, yes.

12 Q And here in your report which is  
 13 Exhibit -- Plaintiff's Deposition Exhibit 5, you also  
 14 claim that you've had extensive practical experience  
 15 in the field of international law generally, right?

16 A Yes.

17 Q Okay. And you -- as opposed to your  
 18 practical experience, you go on to say that you have  
 19 also written extensively on that subject, the field  
 20 of international law.

21 A Yes.

22 Q Okay. Are you asserting any subject  
 23 matter expertise with respect to the Arab-Israeli  
 24 Conflict?

25 A Yes. I am asserting expertise with

1 that I submitted to -- to the law firm.

2 Q Just an estimate is okay. Does about 19  
 3 hours sound right?

4 A Yes, yes, it does.

5 MS. MACHNES: Okay. I  
 6 think it's a good time to take a break,  
 7 and we'll come back.

8 (Recess taken.)

9 Q Professor Quigley, what are you offering  
 10 yourself as an expert in in this case?

11 A International law.

12 Q Are you offering yourself as an expert in  
 13 any other area?

14 A Well, the -- the issue of statehood  
 15 involves the question of how the international  
 16 community has dealt with Palestine so I would say  
 17 that I have expertise on that issue.

18 Q And you write in your report you have  
 19 written extensively on the Middle East, right?

20 A Yes.

21 Q What do you mean by issues relating to  
 22 the Middle East other than Palestinian statehood?

23 A Well, I've written on a variety of issues  
 24 that relate to the Arab-Israeli Conflict.

25 Q What are the issues?

1 respect to how the international community has dealt  
 2 with -- with the status of Palestine because that's  
 3 really the essence of the issue of whether an entity  
 4 is or is not a state. It's how the international  
 5 community deals with it so you do have international  
 6 law in the background, but the actual issue in my  
 7 report is more factual than legal in character.

8 Q But you don't expressly in your report  
 9 claim to have subject matter expertise with respect  
 10 to the Arab-Israeli Conflict; is that right?

11 A Well, I'm not sure what you mean by  
 12 subject matter expertise on the Arab-Israeli  
 13 Conflict.

14 Q Well, you say you have extensive  
 15 practical -- in this paragraph Roman Numeral I.2 you  
 16 say you have extensive practical experience in  
 17 international law, and you say you have written  
 18 extensively on international law and in particular on  
 19 issues relating to the Middle East.

20 A Yes.

21 Q So you don't expressly assert subject  
 22 matter expertise with respect to the conflict in the  
 23 Middle East -- or, sorry, with respect to the  
 24 Arab-Israeli Conflict specifically?

25 A Well, I have certain expertise on

<p style="text-align: right;">Page 102</p> <p>1 Q And remaining on a payroll would 2 constitute some form of encouragement? 3 A Well, I am not sure what remaining on a 4 payroll means when a person is in prison and 5 presumably -- are they being compensated while they 6 are in prison? 7 Q To the extent the person gets out of 8 prison and the money has now been in a pile in a bank 9 account somewhere that they then can access, they are 10 being compensated while in prison. 11 MR O'TOOLE: Is that 12 question a hypothetical? 13 MS. MACHNES: We are 14 talking about a hypothetical. 15 MR O'TOOLE: Could you 16 repeat the hypothetical? 17 Q We are talking about a group of 18 state-employed security officers who have planned and 19 perpetrated acts of violence against unarmed 20 civilians, who were then convicted of those acts, are 21 imprisoned, and while they are imprisoned remain on 22 the government's payroll. 23 A And you are asking for my opinion apart 24 from what the law might or might not be on this as to 25 whether there should be a law that --</p>	<p style="text-align: right;">Page 104</p> <p>1 Q By the way for purposes of this 2 deposition what is your definition of Palestine? 3 What are we referring to when we say -- when we use 4 the term "Palestine"? 5 A It is a state. 6 Q Okay. By using the term Palestine, are 7 you prejudging the -- whether -- the issue of whether 8 Palestine is a state or not? 9 A Well, I mean, the term is used in many 10 ways. The term can be used historically for ancient 11 times. The term is used in many ways. It's my 12 conclusion that Palestine is a state. 13 Q Okay. But by using the term you are not 14 necessarily acknowledging one way or the other 15 whether Palestine is a state. 16 A Well, I mean, if I am talking about 17 ancient history, I can use the term Palestine in 18 another sense, but the way I am using it presently, 19 yes, it does imply that Palestine is a state. 20 Q Okay. How do you define governing 21 authority? 22 A Well, an entity that carries out 23 governmental functions. 24 Q Okay. And your position is that the 25 Palestinian Authority, which I'll refer to as the PA,</p>
<p style="text-align: right;">Page 103</p> <p>1 Q Whether you think that something -- a 2 government -- whether you think that's a legitimate 3 thing, a justifiable thing for a government to do, to 4 keep state -- to keep people who were state 5 employees, who have then been convicted of these acts 6 of violence, to keep them on their payroll after they 7 have been convicted and imprisoned? 8 A I don't really have an opinion on that. 9 Q Okay. How about if while these same 10 hypothetical security officers after they're 11 convicted and imprisoned are given promotions, not 12 only are they kept as government employees but they 13 are given promotions while they are in jail just on 14 their -- in their files. 15 A I don't have an opinion on that. 16 Q Okay. Are you aware of any international 17 law that allows a government to give such promotions? 18 A I'm not aware of any international norms 19 one way or the other. 20 Q Okay, okay. So in your report, which is 21 Plaintiff's Deposition Exhibit 5, you take the 22 position that "The Palestinian Authority, also known 23 as the Palestinian National Authority, is a governing 24 authority of Palestine," correct? 25 A Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 is a governing authority of Palestine, right? 2 A Yes. 3 Q So are there other governing authorities 4 of Palestine? 5 A Yes, the Palestine Liberation 6 Organization. 7 Q Okay. Are there any others? 8 A Hamas would be another one. 9 Q Okay. And any others? 10 A No. 11 Q Have there been any others through the 12 course of history, governing authorities of the 13 territories, that you believe constitute a state of 14 Palestine? 15 A Well, there was the Ottoman Empire for 16 several centuries, up until the First World War. 17 Q Anything else? 18 A You are asking what about governing 19 authorities of the area? Well, during the period 20 after the First World War, the British government had 21 administrative functions with regard to -- to 22 Palestine. So it would have been an authority, 23 although it was not -- I mean, it was administering 24 the state of Palestine. After the Second World War, 25 the Egyptian government was in belligerent occupation</p>

<p style="text-align: right;">Page 106</p> <p>1 of Gaza so it was -- it was a -- you might say a de      2 factoid administering authority, similarly for Jordan      3 and the West Bank, and then Israel became a      4 belligerent occupation -- belligerent occupation      5 after 1967.</p> <p>6 Q Okay. Focusing on the 2002-2004 period,      7 what were the governing authorities of Palestine?</p> <p>8 A It would be the Palestinian National      9 Authority and the Palestine Liberation Organization.</p> <p>10 Q Okay. And the Palestinian National      11 Authority is also the Palestinian Authority which --</p> <p>12 A Yes.</p> <p>13 Q -- can also be abbreviated PA?</p> <p>14 A Yes.</p> <p>15 Q And the PLO is the Palestinian Libration      16 Organization --</p> <p>17 A Palestine Liberation Organization.</p> <p>18 Q When did the PA become a governing      19 authority?</p> <p>20 A Well, first, it would have been under      21 the -- the agreement on Jericho and the Gaza Strip,      22 1994.</p> <p>23 Q And what are the PA's governmental      24 functions?</p> <p>25 A Well, it carries out the kinds of</p>	<p style="text-align: right;">Page 108</p> <p>1 as representative of the Palestinian people, right?      2 A Yes.      3 Q Okay. What are the governmental      4 functions of the PLO?</p> <p>5 A The PLO is involved primarily with      6 representing Palestine at the international level.      7 It maintains embassies, diplomatic accord around the      8 world.</p> <p>9 Q Okay. And where does the PLO derive its      10 authority from?</p> <p>11 A Well, it's like any governing authority.      12 It derives its authority ultimately from the      13 population of the country.</p> <p>14 Q And it -- it has -- it acts according to      15 a charter, right?</p> <p>16 A It has a document, yes, called a charter.</p> <p>17 Q Okay. Is the PLO's authority related in      18 any way to the PA's authority?</p> <p>19 A Yes. It was the PLO that actually      20 constituted and created the P -- what you are calling      21 the PA.</p> <p>22 Q Okay. Do their zones of responsibility      23 overlap in any way?</p> <p>24 A They may, though broadly the functions      25 are separate.</p>
<p style="text-align: right;">Page 107</p> <p>1 functions that governments normally do in -- in      2 certain of the territory of Palestine.</p> <p>3 Q Can you list the functions specifically?</p> <p>4 A Collecting garbage, administering the      5 civil service of the country.</p> <p>6 Q Those are just some examples?</p> <p>7 A Those are examples of governing      8 activities.</p> <p>9 Q Okay. And you're familiar with the      10 various documents that make up the Oslo Accords,      11 right?</p> <p>12 A Yes.</p> <p>13 Q And the parties to the Oslo Accords were      14 the PLO, Palestine Libration Organization, and the      15 state of Israel, right?</p> <p>16 A Yes.</p> <p>17 Q And you're also familiar with the United      18 Nations General Assembly Resolution 69/17? Right?      19 It's the 2012 General Assembly resolution.</p> <p>20 A The numbers are?</p> <p>21 Q 067/19.</p> <p>22 A Yes.</p> <p>23 Q You are familiar with that resolution?</p> <p>24 A Yes.</p> <p>25 Q And in that resolution the PLO is named</p>	<p style="text-align: right;">Page 109</p> <p>1 Q Okay. And are they -- are the -- is the      2 authority of the PLO broader or more -- or more      3 narrow than the PA in any way?</p> <p>4 A Well, they are different. They are      5 different spheres of activity. I hesitate to      6 characterize quantitatively.</p> <p>7 Q Okay. Are they -- are they both limited      8 in any way?</p> <p>9 A Well, it's -- I mean, it's a matter of      10 shared functions, I would say.</p> <p>11 Q What do you mean by that?</p> <p>12 A That they have an understanding as to      13 which one does which kind of function.</p> <p>14 Q Okay. Is there any overlap in terms of      15 personnel?</p> <p>16 A Yes, I think there is.</p> <p>17 Q And what's the extent or nature of that      18 overlap?</p> <p>19 A I -- I don't know that precisely enough      20 to give you an answer.</p> <p>21 Q Do you have any general understanding      22 about the nature of the overlap between the personnel      23 in the PA and the PLO?</p> <p>24 A Well, the top, I believe Mr. Abbas is the      25 chair of the PLO and is also the head of the PA, you</p>

<p style="text-align: right;">Page 110</p> <p>1 know.</p> <p>2 Q Okay. And so you are familiar with the 3 1995 agreement that's referred to commonly as the 4 Oslo Accord II, correct?</p> <p>5 A The interim agreement of September, 1995, 6 yes.</p> <p>7 Q Okay. And in that agreement are there 8 any limitations on the Palestinian Authority's 9 authority?</p> <p>10 A It's specified it's not supposed to 11 represent Palestine at the international level.</p> <p>12 Q Okay. And that didn't have any effect on 13 the PA -- excuse me, the PLO's authority to conduct 14 activity at the international level.</p> <p>15 A Correct.</p> <p>16 Q Okay. So in your opinion what exactly is 17 the distinction between the PA and the PLO?</p> <p>18 A Well, the PA carries out functions in the 19 administration of territory, whereas, the PLO 20 represents Palestine at the international level.</p> <p>21 Q Okay. But they may have overlapping 22 personnel.</p> <p>23 A Yes.</p> <p>24 Q And they may have other overlapping 25 specific areas of responsibility for.</p>	<p style="text-align: right;">Page 112</p> <p>1 situations where there is -- where the governing 2 authority is not able to exercise any control in the 3 state, for example, when it's under belligerent 4 occupation, so you might not have any actual exercise 5 of authority by any governing authority, but you can 6 still have a state.</p> <p>7 Q Okay. Oh, and by the way, what are the 8 governmental functions of Hamas, which you mentioned 9 as another one?</p> <p>10 A It administers the -- in the Gaza Strip.</p> <p>11 Q Okay. In your report you also take the 12 position that Palestine is a state, right?</p> <p>13 A Yes.</p> <p>14 Q Okay. And generally what body of law do 15 you use to support that opinion?</p> <p>16 A Well, it's international law that is -- 17 is the background that determines when an entity is a 18 state but -- but that is -- but what international 19 law says is that states are those entities that are 20 accepted by the existing community of states as being 21 a state.</p> <p>22 Q Okay. Be fair to say this is a 23 relatively complicated area and analysis?</p> <p>24 A It can be, yes. There are no bright 25 lines in international law as to what level of</p>
<p style="text-align: right;">Page 111</p> <p>1 A Yes.</p> <p>2 Q Okay. Is this -- is the nuances of 3 the -- are the nuances of the distinction between the 4 PLO and the PA in your report at all?</p> <p>5 A Well, they are both governing authorities 6 of Palestine, so for purposes of my report it doesn't 7 really matter precisely which functions are carried 8 out by which one.</p> <p>9 Q Okay. It's just relevant that there is a 10 governing authority of --</p> <p>11 A That's right, that there is -- that there 12 is a -- a governing authority.</p> <p>13 Q Okay. And why is that relevant?</p> <p>14 A Well, that it acts on behalf of a state.</p> <p>15 Q Okay, okay. So in -- in opining on 16 government authority of a state, and in particular 17 Palestine here, do both or all of the state's 18 governing authorities need to be considered?</p> <p>19 A Well, I mean, the issue is whether there 20 is a state. The governing arrangements can be made 21 in various ways.</p> <p>22 Q So as long as there is a governing 23 authority, it's not necessary to consider any other 24 governing authorities.</p> <p>25 A Well, that's right, except that there are</p>	<p style="text-align: right;">Page 113</p> <p>1 acceptance is sufficient or exactly how that 2 acceptance comes about.</p> <p>3 Q And in addition to no bright lines, 4 there's really no conformity internationally as to 5 what -- how to conduct this analysis or what would 6 satisfy definitions under this?</p> <p>7 A There isn't. It's just when the 8 expressions of acceptance of an entity get to a 9 certain level, then -- then it becomes difficult to 10 say that an entity is not a state.</p> <p>11 Q Is there any conformity as to what that 12 level of acceptance is?</p> <p>13 A There really isn't. I mean, one example 14 would be the admission of Israel to the United 15 Nations in 1949 at a time when it had some acceptance 16 by other states but -- but many states were still not 17 sure what -- what their opinion was. But it was 18 admitted to membership in the United Nations, and a 19 requirement of admission is that an entity is a 20 state. The -- Palestine has very significant 21 international acceptance, I would say sufficient to 22 make it a state by whatever the standard might be.</p> <p>23 Q But it hasn't -- as opposed to Israel it 24 hasn't gained full membership in the United Nations, 25 correct?</p>

<p style="text-align: right;">Page 114</p> <p>1 A That's correct.      2 Q So in -- okay.      3 In your opinion what is the difference      4 between statehood and being an independent state?      5 A Independence can be taken in two      6 different ways. It can mean that a state has      7 complete control over its -- its own affairs. I      8 think that's not the sense in which it -- it is      9 appropriately used here because that would mean that      10 a state under belligerent occupation, let's say      11 Kuwait during the time it was occupied by Iraq, would      12 not have been considered a state.      13 I think what independence means is that      14 the entity is -- is considered to be the sovereign in      15 the territory. You might say in a legal sense that      16 is -- it may not, in fact, be able to control, but      17 nonetheless it is the entity that is accepted as      18 being that state.      19 Q Okay. And those were two differing --      20 two differing definitions of independence, correct?      21 A Yes, yes.      22 Q And how does that differ from statehood?      23 A Well, for statehood I think independence      24 in the -- in the second sense is required, that an      25 entity is recognized as being the legitimate</p>	<p style="text-align: right;">Page 116</p> <p>1 acceptance of an entity, that then it is a state      2 under international law.      3 Q And that's -- that's an international      4 norm, correct?      5 A Yes.      6 Q And is that different from -- and is an      7 international norm binding?      8 A Yes.      9 Q How so?      10 A Well, the -- once an entity becomes      11 sufficiently accepted as a state, it is considered to      12 be a state and -- and that -- that is an      13 international norm.      14 Q Okay. And in your opinion Palestine has      15 reached a sufficient level of acceptance to      16 constitute a state, right?      17 A Yes.      18 Q But at the same time it has not gained      19 full membership before the UN, right?      20 A Yes.      21 Q Okay, okay. So in your report you make      22 three different sort of independent arguments that      23 Palestine is a state, correct?      24 A I would have to look to see what.      25 Q Well, first, you make an argument that</p>
<p style="text-align: right;">Page 115</p> <p>1 authority of the -- of a particular territory. It's      2 not necessary that it actually be in control if a      3 foreign army comes in and takes it over.      4 Q Okay. And where -- what's your basis      5 for -- for these differing definitions and their      6 relationship to each other?      7 A Well, it's the state practice. It's the      8 practice of states in accepting, you know, putative      9 entities, putative states into the international      10 community as states.      11 Q But as we saw in the different treatment      12 of Israel and Palestine, for example, there is not      13 really any conformity as to state practice even; is      14 that a fair characterization?      15 A I am not sure what you mean by conformity      16 of state practice.      17 Q Well, you said that the -- you're drawing      18 these definitions and the distinctions between them      19 from state practice.      20 A Uh-huh, uh-huh.      21 Q But there's no way to look at state      22 practice in a uniform way, right?      23 A Yeah. There's no specific rule that says      24 what the level of acceptance has to be. There is      25 probably a norm that once you have very substantial</p>	<p style="text-align: right;">Page 117</p> <p>1 Palestine was a state beginning in the 1920s and      2 continues as such to the present time, right?      3 A Yes, that's correct.      4 Q Okay. You also make an argument that      5 Palestine fits the criteria for statehood under the      6 international definition of statehood, right?      7 A Yes.      8 Q Okay. And you also make a third argument      9 that Palestine qualifies as a state because it is --      10 it has reached a level of acceptance among the      11 international community such that it qualifies as a      12 state, right?      13 A Yes, uh-huh.      14 Q I want to go through these -- those      15 three. Do you make any other arguments in your      16 report other than those three that Palestine      17 constitutes a state?      18 A Well, the basic argument is that it -- it      19 has been accepted by the international community.      20 That's the key argument. You don't really need the      21 others.      22 Q Uh-huh.      23 A It is my opinion that Palestine became a      24 state in the 1920s. If someone wants to disagree      25 with my opinion on that, that would -- wouldn't mean</p>

<p style="text-align: right;">Page 118</p> <p>1 Palestine is not presently a state. As well, I in      2 the report referred to the so-called Montevideo      3 criteria for statehood but I indicate that that is      4 not a test that is to be applied by a court but it's      5 a set of factors that may or may not be considered by      6 states in their determination to accept an entity as      7 a state. So the acceptance is the basic and really      8 the only necessary factor to make Palestine a state.</p> <p>9 Q Okay. Are you aware that -- are you      10 familiar with Second Circuit case law -- U.S. Second      11 Circuit case law on Palestinian statehood?</p> <p>12 A No.</p> <p>13 Q Okay. Are you aware that the Second      14 Circuit has adopted the Montevideo -- I am not sure      15 how you pronounced it, Montevideo factors as the      16 relevant analysis for determining whether a state has      17 been recognized as such?</p> <p>18 A I do recall those factors being      19 considered in -- I am not sure if it's the Second      20 Circuit or some other circuit in -- in the matter.      21 But I -- as I say, those are not the relevant --      22 that's not the relevant analysis for a court. As I      23 explained in my report, it's the acceptance of an      24 entity by the community of states and that community      25 of states may or may not utilize the Montevideo</p>	<p style="text-align: right;">Page 120</p> <p>1 based on those courts' opinions?</p> <p>2 A Well, it's based on the Permanent Court      3 of International Justice opinion where it follows      4 that approach.</p> <p>5 Q Any other more recent court decisions      6 that support your opinion or what the Court of      7 International Justice did in 1925?</p> <p>8 A Well, yeah. The issue of Palestine      9 state, it hasn't come up again squarely before an      10 international court since that time.</p> <p>11 Q What about U.S. courts?</p> <p>12 A In U.S. courts it has, yeah, and the      13 decisions have been mixed. I cite one in the report,      14 the Kletter case, where a U.S. court said that      15 Palestine was a state. It didn't talk about the      16 Montevideo criteria. It didn't, in fact, talk about      17 its basis in general. It just simply --</p> <p>18 Q Was the issue before the Kletter court      19 whether Palestine was a state?</p> <p>20 A Well, yes. The fellow was saying I      21 didn't effectively make myself a national of another      22 state because it was Palestine where I made myself a      23 national and he was trying to say Palestine wasn't a      24 state, therefore, he still had U.S. citizenship and      25 the court said, no, pal, you gained nationality in</p>
<p style="text-align: right;">Page 119</p> <p>1 criteria in deciding whether to accept something as a      2 state.</p> <p>3 Q Okay. And when you say it's not the      4 relevant analysis for courts, what courts are you      5 talking about?</p> <p>6 A Well, any court. I mean, if you look at      7 the Permanent Court of International Justice back in      8 the 1920s where it had to decide whether Palestine      9 was a state then, it did not go through the factors      10 then that were a few years later put into the      11 Montevideo Convention. It looked at how Palestine      12 was accepted in the international community, and at      13 that time the primary factual point was the Lausanne      14 Treaty of 1923 where Palestine is -- is recognized as      15 a state by -- by the major powers that were in the      16 process of concluding the First World War.</p> <p>17 Q Okay. What about other than the Court of      18 International Justice, are you referring also to      19 domestic U.S. courts when you say that the relevant      20 analysis is not the Montevideo factors?</p> <p>21 A Yes. It's true for any decision making      22 body that has to determine whether an entity is or is      23 not a state. The essence is the acceptance of the      24 entity in the international community.</p> <p>25 Q And is that your opinion, or is that</p>	<p style="text-align: right;">Page 121</p> <p>1 another state, namely, Palestine.</p> <p>2 Q But the issue before the primary holding      3 of the Kletter case was about nationality; it wasn't      4 about -- it wasn't about whether Palestine was a      5 state. It was about the plaintiff's nationality in      6 that case, right?</p> <p>7 A Well, yes, that's how the case arose.</p> <p>8 MS. MACHNES: If you guys      9 want to stop for lunch, we can now. I      10 can go a little further, but I am at a      11 point where we could take a break if we      12 want.</p> <p>13 (Discussion off the record.)</p> <p>14 (A lunch recess was taken at 12:02 p.m.)</p> <p>15 EXAMINATION CONTINUED BY</p> <p>16 MS. MACHNES:</p> <p>17 Q Professor Quigley, earlier in the      18 deposition -- oh, actually, first, let me ask you      19 during the breaks have you discussed with counsel at      20 all the substance of your testimony?</p> <p>21 A No.</p> <p>22 Q No. Have you taken any advice from      23 counsel since this deposition started about your      24 testimony?</p> <p>25 A No.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q Okay. Earlier you cited that one of the 2 sources for your -- for support of your assertion 3 that Palestine was a state from the 1920s period 4 forward was the Treaty of Lausanne, correct? 5 A Yes. 6 Q What was that document? 7 A It was the treaty of -- of peace that 8 ended the First World War as between the European 9 allies and Turkey. 10 Q Okay. And who were the parties to that 11 treaty? 12 A I would say -- well, on one side was 13 Turkey. On the other side were the European allies. 14 And I'm not going to be able to name them all but 15 Britain, Italy, France, a couple of others. 16 Q Was the United States a party to that 17 treaty? 18 A No. 19 Q Okay. Does -- does the Treaty of 20 Lausanne mention the state of Palestine? 21 A It mentions the territories that are 22 being detached from the Ottoman Empire, the Turkish 23 Empire. It doesn't mention them by name, but they 24 were Syria, Iraq, and Palestine. 25 Q And in what context does it mention those</p>	<p style="text-align: right;">Page 124</p> <p>1 A Yes. 2 Q And how does it satisfy the international 3 definition of statehood? 4 A It is accepted by the community of states 5 as a state. I mean, it's accepted by -- by some -- 6 by different states in different ways, but it's 7 actually accepted by I would say virtually all states 8 including Israel and including the United States. 9 Q Okay. What is in your words the 10 international definition of statehood? 11 A Well, it relates to the -- the hold on a 12 territory of a particular entity. I mean, I haven't 13 really thought about it in terms of defining 14 statehood as such, and you don't see it addressed 15 quite that way. 16 Q Well, in your report you rely on several 17 sources, not an international definition of 18 statehood, right? 19 A Yes. 20 Q And that's not limited to acceptance, 21 correct? It's a different analysis than whether a 22 state is accepted in the international community, 23 right? 24 A Well, the basic way in which an entity 25 becomes a state is that it becomes accepted by the</p>
<p style="text-align: right;">Page 123</p> <p>1 territories? 2 A It mentions them -- it calls them states 3 that are detached from the Turkish Empire. And 4 one -- one mention is in relation to nationality, the 5 nationality of the persons who reside in those 6 territories. It says the states that are detached 7 from Turkey will -- will deal with -- with the 8 nationality. In fact, the people will become 9 nationals of those states and there's also a 10 provision on the -- on responsibility for the Turkish 11 national debt that would be assumed by these states 12 that are being detached. So in both those contexts 13 the entities that were being detached which are the 14 three I mentioned are referred to as states. 15 Q But it just refers to those entities 16 generally. It doesn't say that it's referring to all 17 of the entities or mention them specifically by name, 18 right? 19 A It does not mention them by name. It's 20 quite obvious that it's the -- they just say the 21 states detached and these are the ones that were 22 detached. 23 Q And -- okay. You also argue that 24 Palestine satisfies the international definition of 25 statehood, correct?</p>	<p style="text-align: right;">Page 125</p> <p>1 existing states. That's probably -- I don't know if 2 you would call that a definition of statehood but 3 that's how an entity becomes a state. 4 Q We will turn to the acceptance part of 5 your -- of your report in a minute; but, right now, I 6 want to talk about the international definition of 7 statehood that you also discuss in your report which 8 is, for example, laid out in the Montevideo factors. 9 Do you recall that part of your report? 10 A Yes. 11 Q Okay. So what is the international 12 definition of a state according to the Montevideo 13 factors? 14 A Well, I mean, I wouldn't agree with the 15 assumption of your question that that provides the 16 definition of what entities are or are not states. 17 These are factors that are considered in determining 18 whether a particular state is going to accept a 19 punitive -- putative state as being a state. But 20 there's no indication that states necessarily have to 21 use these. But -- but to some extent they are 22 referred to by states when -- so they have some 23 relevance, but they're not definitive. That is, one 24 doesn't decide whether a particular entity is a state 25 by saying let's look at the Montevideo criteria.</p>

<p>1 a state.</p> <p>2 Q In your opinion is there a difference 3 between the word "control" and a government's 4 exercising "governmental functions"?</p> <p>5 A Well, the government must exercise a 6 certain amount of control in order to exercise 7 function so I think the two are the same.</p> <p>8 Q Okay. Focusing then on control, what is 9 meant by control in this -- in the Restatement's 10 definition or in the Montevideo Convention?</p> <p>11 A I think it's not very well defined. I 12 mean, you have many entities in the world where the 13 government exercises only very vague control. Our 14 governments may have more control in some parts of 15 their territory than in other parts of their 16 territory. But that, you know, is not considered -- 17 the fact that they don't have what you might call 18 complete control in the entirety of the territory 19 doesn't negate the existence of those entities as 20 states.</p> <p>21 Q And in your opinion in your report you 22 state that the Palestinian Authority does exercise 23 control over the Palestinian population, right?</p> <p>24 A Yes.</p> <p>25 Q Okay. And -- and you said earlier that</p>	<p>1 A Well, yes, but one has to take into 2 account, of course, that the territory is under 3 belligerent occupation overall which means that it 4 can't exercise the kind of control that -- that 5 governments normally exercise.</p> <p>6 Q Okay. In -- in area A specifically, 7 that's what you were referring to, letters?</p> <p>8 A Yeah.</p> <p>9 Q In area A specifically, is that one of 10 the specific areas of the territories that the 11 Palestinian Authority exercises all basic government 12 functions?</p> <p>13 A Yes.</p> <p>14 Q Okay. In your report you also say that 15 the Palestinian Authority exercises government 16 functions in many ways, right?</p> <p>17 A Uh-huh, uh-huh.</p> <p>18 Q What are -- what are those ways? Just 19 list as many as you can think of.</p> <p>20 A Well, it has a police force. It has a -- 21 you know, agencies that deal with -- with sanitation.</p> <p>22 Q Okay. Anything else you can think of?</p> <p>23 A There are probably others but.</p> <p>24 Q Okay. Well, focusing on the 2000 to 2004 25 period specifically, did the Palestinian Authority</p>
<p>Page 131</p> <p>1 the PA has exercised control or has exercised 2 governmental function since 1994, correct?</p> <p>3 A Yes.</p> <p>4 Q Okay. Beginning in 1994, what sectors of 5 government did the PA begin to exercise control over?</p> <p>6 A Do you mean functionally what sectors or 7 territorial? What --</p> <p>8 Q Functionally.</p> <p>9 A Functionally? Well, in certain parts of 10 the territory it exercised really all the basic 11 functions of government.</p> <p>12 Q Okay. Which parts of the territory?</p> <p>13 A Those are what then were defined in the 14 Gaza-Jericho Agreement of 1994 and the interim 15 agreement was 1995 where there's a disposition as to 16 different parts of the territory.</p> <p>17 Q So which specifically are you --</p> <p>18 A Well, I mean, you would have to go into 19 those to see. They use letters to label them and 20 each letter related to a certain part and portion of 21 the territory.</p> <p>22 Q But it's your opinion that overall the 23 Palestinian Authority exercises sufficient control to 24 meet the requisite amount of control that's required 25 under a definition of statehood?</p>	<p>Page 133</p> <p>1 have the ability to enact laws?</p> <p>2 A Yes.</p> <p>3 Q Okay. Did it have the ability to enforce 4 laws?</p> <p>5 A Yes.</p> <p>6 Q And had the power to tax?</p> <p>7 A Yes.</p> <p>8 Q You said it had the power to form a 9 police force?</p> <p>10 A Yes.</p> <p>11 Q Did it have the authority to arrest 12 Palestinians?</p> <p>13 A Yes.</p> <p>14 Q Okay. Did it have the power to set up 15 courts that would apply Palestinian law?</p> <p>16 A Yes.</p> <p>17 Q And, in fact, it had the authority to set 18 up an entire judicial system, right?</p> <p>19 A Yes.</p> <p>20 Q Okay. Did it have the power to prosecute 21 members of its population?</p> <p>22 A Yes.</p> <p>23 Q And that included the ability to 24 interrogate Palestinians, correct?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q And to detain them?      2 A Yes.      3 Q Did it also have the ability to conduct      4 trials generally?      5 A Yes.      6 Q And can you think of -- and you said deal      7 with sanitation. Anything else you can think of that      8 specifically were ways in which the Palestinian      9 Authority exercised government functions during the      10 2000 to 2004 period?      11 A Oh, there probably are others but I can't      12 think of those at the moment.      13 Q It also had in the -- based on the 1993      14 Declaration of Principles the general oversight over      15 education, culture, health, social welfare, tourism,      16 that sphere of life, correct?      17 A Yes.      18 Q So those were all ways in which the      19 Palestinian Authority exercised control over --      20 A Uh-huh.      21 Q -- the Palestinian population, right?      22 A Yes.      23 Q And as a governing authority, did the PA      24 have a responsibility to exercise these government      25 functions?</p>	<p style="text-align: right;">Page 136</p> <p>1 on exactly what areas it does or does not. For      2 purposes -- for our purposes it doesn't really matter      3 as between the two, so it's not something I directed      4 my attention to in my report.      5 Q What -- from where does the PLO derive its      6 authority to enact legislation?      7 A It derives authority the way any      8 government derives authority, and when it gets you      9 into the realm of political theory, how does that --      10 Q Well, for example, the United States      11 Congress acts based -- according to the United States      12 Constitution. Is there a similar document?      13 A Are you asking me about a document?      14 Q Yeah.      15 A I mean, ultimately the authority of any      16 government comes from the people, whether the people      17 actively want that government or whether they      18 acquiesce in it reluctantly but that's ultimately      19 where -- where the authority derives.      20 Q So the Palestinian people have given the      21 PLO the authority to enact legislation?      22 A Yes, but, again, I mean, that authority,      23 you know, can be expressed in simply by acquiescence      24 but, yes.      25 Q Okay. And why doesn't the PLO enact</p>
<p style="text-align: right;">Page 135</p> <p>1 A Yes.      2 Q And did the Palestinian Authority, in      3 fact, exercise those government functions during the      4 2000 to 2004 timeframe?      5 A Yes.      6 Q And it continues to exercise them to the      7 present day, right?      8 A Yes.      9 Q Now, focusing on the PLO, what -- what      10 types of government -- what types of government      11 action is the PLO authorized to conduct?      12 A Well, it conducts relations with the      13 outside world basically.      14 Q Okay. So does it have any -- does it      15 have any responsibilities related to the Palestinian      16 population specifically?      17 A Well, it has created the PA --      18 Q Okay.      19 A -- and then the PA exercises functions.      20 Q Okay. Can the PLO itself enact      21 legislation?      22 A It doesn't directly enact legislation      23 itself, no.      24 Q It doesn't. Does it have the ability to?      25 A Well, yes, it does, yes. I am not clear</p>	<p style="text-align: right;">Page 137</p> <p>1 legislation, if it has the power?      2 A Well, it's the PA that is -- is      3 functioning as the -- the immediate governing      4 authority in the West Bank and the -- so you find it.      5 Q So has the PLO expressly delegated its      6 power to enact legislation to the PA, for example?      7 A Yes.      8 Q Has it done that with respect to all of      9 its powers of governance?      10 A Well, it simply set it up as the      11 governing authority, and then, you know, the PA takes      12 the matter from there.      13 Q Okay. Why doesn't -- why doesn't this      14 relationship, I guess, between the PA and the PLO      15 matter to your expert opinion?      16 A Well, I mean, at one level you need to      17 have a governing authority under the Montevideo      18 criteria, and it doesn't matter exactly how that's      19 parceled out.      20 At another level when you have      21 belligerent occupation, you don't need to have      22 control at all so everything we're talking about here      23 is not essential to Palestine being a state. I mean,      24 there are many instances of belligerent occupation      25 where the belligerent occupant exercises all powers,</p>

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1 and the entity is still regarded as a state. If you  
 2 look at Kuwait during the time Iraq occupied it, the  
 3 entire government of Kuwait fled to outside the  
 4 country. They weren't there. They were not  
 5 exercising authority on the ground. So the --  
 6 this -- to say, well, you know, do they have to  
 7 exercise control to be a state, no, obviously not.

8 Q Okay. But in this case --

9 A But in this case there is considerable  
 10 exercise of control, yes.

11 Q Okay. So in your report and as you've  
 12 said through -- from the beginning of this  
 13 deposition, you take the position that the  
 14 determinative analysis of statehood is recognition or  
 15 acceptance as a state by other states in the  
 16 international community, right?

17 A I will use the term acceptance rather  
 18 than recognition. Recognition is a term that has a  
 19 particular significance that relates to this issue  
 20 but in a slightly different way, that is, states may  
 21 accept another entity as a state without according it  
 22 a diplomatic recognition.

23 If you are using recognition in your  
 24 question in the sense of diplomatic recognition, that  
 25 is a procedure that states engage in. If they do

1 when an entity becomes a state. It's a factual issue  
 2 that comes out of international practice.

3 Q But we don't know what that level of  
 4 acceptance is, right?

5 A That's right. There's no definite, you  
 6 know, rule in terms of percentage of states or  
 7 percentage of the world's population or percentage of  
 8 the world's territory or anything of the sort. It's  
 9 just that when -- when it becomes sufficiently  
 10 general, then we say that an entity is accepted as a  
 11 state, and the fact that you -- you would have a few  
 12 that don't accept wouldn't be determinative in the  
 13 other direction if there are others that -- that  
 14 don't accept an entity as a state.

15 But you may have entities, of course,  
 16 that have accorded diplomatic recognition of the  
 17 entity which, as I say, doesn't mean that they regard  
 18 it as a state.

19 Q What does that mean practically that you  
 20 could have 1 nation that doesn't accept a state and  
 21 30 that do? What does that mean for that one state  
 22 that doesn't accept the -- that an entity constitutes  
 23 a state? What does that mean practically speaking?

24 A Practically it doesn't mean very much for  
 25 them. I mean --

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1 engage in it, if they recognize another entity, yes,  
 2 that would definitely mean they accept it as a state,  
 3 but they could accept it as a state without having  
 4 accorded diplomatic recognition. When Israel was  
 5 admitted to the United States, there were states that  
 6 voted in favor of admitting Israel as a state to the  
 7 United Nations even though they had not accorded  
 8 Israel diplomatic recognition so I'm just.

9 Q Okay. So diplomatic recognition is an  
 10 indication of acceptance, correct?

11 A Yes.

12 Q Okay. But it's not necessarily true that  
 13 acceptance requires diplomatic recognition.

14 A Correct.

15 Q Okay. What is your basis for -- what is  
 16 your basis for saying that the determining factor is  
 17 whether the international -- international community  
 18 accepts a state as such?

19 A Well, that's -- that's the way you see  
 20 states interacting, that is, once an entity gets to a  
 21 certain level of acceptance, that -- that is  
 22 considered determinative of the status of the state.  
 23 I mean, I suppose I base it on the practice of  
 24 states. There's not a document I can point to.  
 25 There is no like international treaty that tells you

1 Q For who?

2 A I mean, for example, you would find  
 3 states that do not accept Israel as a state. There's  
 4 a group of states that takes that view. Does that  
 5 mean that Israel is not a state? No. I think there  
 6 is -- there is clearly sufficient generality of  
 7 acceptance of Israel as a state that one would say  
 8 the fact that you have some states that don't accept  
 9 Israel, that that's simply irrelevant.

10 Q Are there international scholars other  
 11 than yourself that do not agree that Palestine is a  
 12 state?

13 A Yes.

14 Q Okay. This is -- this is a complicated  
 15 issue on which reasonable minds can differ, correct?

16 A Well, some are less reasonable than  
 17 others. Those who disagree with me are less  
 18 reasonable.

19 Q Okay. But the disagreement is possible.

20 A Yes.

21 Q So as we've established, there is one way  
 22 that we know when an entity is accepted as a state  
 23 and that's if it's extended diplomatic recognition,  
 24 right?

25 A Yes.

36 (Pages 138 to 141)

1 Q What are the other ways that we can tell  
 2 an entity has been accepted as a state when  
 3 diplomatic recognition is not present?

4 A Well, it could be an expression in some  
 5 kind of international document that the entity is a  
 6 state such as the resolution of November 29, 2012.  
 7 It could be a vote in favor of admitting an entity to  
 8 the United Nations which would be true, as I  
 9 mentioned, of some states that voted for Israel's  
 10 admission to the United Nations even though they  
 11 hadn't accorded diplomatic recognition. It could be  
 12 interaction with that entity in a way that is  
 13 inconsistent with a view that the entity is not a  
 14 state.

15 In fact, when the Declaration of  
 16 Principles was concluded in 2003 and in that  
 17 connection there were expressions on the Israeli side  
 18 and the Palestinian side of recognition of each  
 19 other, that to my mind bespoke an acceptance by  
 20 Israel that Palestine was a state. That was also the  
 21 view of Benjamin Netanyahu at the time who was the  
 22 member of the Knesset and opposed that declaration.  
 23 He criticized it on the grounds that Israel was  
 24 accepting Palestine as a state.

25 So you can have a variety of kinds of

1 a state even if there is no diplomatic recognition.

2 A Correct. Diplomatic recognition is  
 3 considered to be a discretionary matter with the  
 4 state so that if -- if a state, you know, doesn't  
 5 like things that another state does, then they will  
 6 withhold recognition. And here I think you find some  
 7 states withholding recognition of Palestine because  
 8 they think that's a way of pressuring it to come to  
 9 an arrangement with Israel.

10 Q One of the -- one of the ways that you  
 11 just mentioned that we know an entity is accepted as  
 12 a state even though there's no diplomatic recognition  
 13 necessarily is a resolution to be invited into the  
 14 UN, right?

15 A As a member state you mean. To be --  
 16 when you say "invited."

17 Q Those were your words but, sure, as a  
 18 member state.

19 A Well, it could be invited as a member  
 20 state or invited in some other capacity but, yes.

21 Q Okay. And, in fact, in your report and  
 22 earlier we've talked a bit about the 2012 General  
 23 Assembly resolution in which the General Assembly  
 24 voted on the question of Palestine, right?

25 A Yes.

1 interaction. Or under the Declaration of Principles,  
 2 the negotiation of borders, the fact that Israel  
 3 agreed that it was going to negotiate borders with --  
 4 with the PLO was an acceptance that the PLO was  
 5 representing a state because you don't negotiate  
 6 borders with -- with the, you know, the Parent  
 7 Teacher Association. You negotiate borders with a  
 8 state, or you have the road map of 2003 where to my  
 9 mind the United States expressly stated that it  
 10 considered Palestine to be a state because it said  
 11 that within a few weeks the United States would agree  
 12 with -- the United States and the other major powers  
 13 would promote the diplomatic recognition of Palestine  
 14 as a state and that could not have been deposited in  
 15 that fashion if the United States didn't consider  
 16 that Palestine was -- was a state.

17 I think the confusion sometimes comes  
 18 because there are entities that want to encourage the  
 19 Palestinians and Israelis to negotiate, and so if you  
 20 ask at one level, they'll say, well, the statehood  
 21 will come out of that but just the fact of  
 22 encouraging them to negotiate means that there's  
 23 effective acceptance as a state.

24 Q Okay. So those are some of the ways --  
 25 some of the indications that an entity is accepted as

1 Q And what was -- what did the General  
 2 Assembly vote on in that resolution?

3 A Well, it said that the -- the mission of  
 4 Palestine, the observer mission, which had been in  
 5 existence for some time at the United Nations, was  
 6 the -- was the mission of a state.

7 Q Could you repeat that? Sorry.

8 A It said the mission of Palestine, the  
 9 observer mission, was the -- was the mission of a --  
 10 of a state.

11 Q Did it ultimately vote that it would  
 12 recognize Palestine as a nonmember observer state?

13 A Well, the term "recognize" isn't quite  
 14 appropriate here because it confuses with "diplomatic  
 15 recognition."

16 Q Okay. Did it ultimately accept Palestine  
 17 into the UN as a nonmember observer state?

18 A Yes.

19 Q Okay. What is a nonmember observer  
 20 state?

21 A It would be an entity that has observer  
 22 status at the United Nations and which is moreover  
 23 considered to be a state, although not a member of  
 24 the organization.

25 Q To be a member, to have formal membership

<p style="text-align: right;">Page 146</p> <p>1 in the UN, you have to be a state, correct?      2 A Yes.      3 Q So if being accepted as a nonmember      4 observer state is equivalent to being a state, how is      5 a nonmember observer state any different than being a      6 full member of the UN?      7 A Well, it's -- it's not membership in      8 terms of the prerogatives, although it comes rather      9 close to it. But it would mean that the entity      10 doesn't vote on resolutions in the way a member state      11 would vote on resolutions. It doesn't contribute to      12 the expenses of the organization the way a member      13 would.</p> <p>14 Q Okay. And if -- if the UN wanted to      15 admit Palestine as a full member in which it only      16 does for states, it could vote to do so also,      17 correct?</p> <p>18 A Yes.</p> <p>19 Q And, in fact, in September of 2011,      20 the -- the government of Palestine submitted a bid to      21 the UN for full membership, correct?</p> <p>22 A Yes.</p> <p>23 Q And do you cite to that in your report?</p> <p>24 A No, I didn't.</p> <p>25 Q Why not?</p>	<p style="text-align: right;">Page 148</p> <p>1 on hold. It may come up again; it may not come up      2 again. But given the fact that the General Assembly      3 went ahead and adopted this resolution suggests that      4 the overwhelming majority of the membership in the      5 United Nations regards Palestine as a state.</p> <p>6 Q And in the meantime while the Security      7 Council put the 2011 bid on hold, the state -- the      8 government -- the Palestinian government approached      9 the General Assembly and made a bid for admission as      10 a nonmember observer state, correct?</p> <p>11 A I wouldn't use the term "admission" but      12 made a request, let's say, that the General Assembly      13 adopt a resolution, you know, specifying that      14 Palestine is a state.</p> <p>15 Q So the government of Palestine initiated      16 that while the Security Council put the 2011 bid on      17 hold?</p> <p>18 A Yes.</p> <p>19 QOkay. And as -- as an expert on      20 international law, how do you -- how would you      21 characterize General Assembly resolutions?</p> <p>22 A Well, General Assembly resolutions have a      23 certain status under the charter of the United      24 Nations. General Assembly resolutions do not make      25 law. General Assembly resolutions are often taken as</p>
<p style="text-align: right;">Page 147</p> <p>1 A Well, I mean, that would be another way      2 in which an expression could be made of acceptance of      3 Palestine as a state but the General Assembly did it      4 in a different way and that, I think, is what is      5 determinative on the -- in -- as providing a very      6 significant expression of international acceptance of      7 Palestine. Certainly had there been acceptance into      8 membership that would have been another such      9 expression.</p> <p>10 Q What happened with the September, 2011,      11 bid for membership?</p> <p>12 A It was referred to the Security Council,      13 and to date the Security Council has not taken any      14 action. It hasn't voted against; it hasn't voted in      15 favor.</p> <p>16 Q And is that a significant expression of      17 international views on Palestine similar to what you      18 said was significant expression in the 2012      19 resolution?</p> <p>20 A Well, if you had some expression from the      21 Security Council that it was refusing to act because      22 it didn't consider the entity to be a state, then      23 that would be relevant. Here you have not had any      24 such expression by the Security Council. The      25 Security Council has merely, you know, put the matter</p>	<p style="text-align: right;">Page 149</p> <p>1 an expression of the views of the international      2 community on a particular subject, and in particular      3 when a state votes a particular way on a resolution,      4 that's an indication of its view on an issue.</p> <p>5 Q But it's not binding law in any way.</p> <p>6 A The resolution itself is not binding law      7 except to the extent that this resolution does relate      8 to the status of the Palestine mission at the UN so      9 in that sense it is binding, that that makes the      10 observer mission at the UN the observer mission of a      11 state.</p> <p>12 Q So you're saying it's binding; you're      13 saying General Assembly resolutions are binding on      14 the UN?</p> <p>15 A Yes.</p> <p>16 Q But other than that they are not binding?</p> <p>17 A Well, the General Assembly can't create      18 law. It can't say, you know, we consider such and      19 such to be required under international law.</p> <p>20 Q On the other hand the Security Council      21 has different authority within the UN?</p> <p>22 A Well, the Security Council doesn't make      23 law but it -- it has a different realm of operation,      24 in particular relating to war and peace. With regard      25 to admission of members, at least the way it's</p>

<p style="text-align: center;">Page 150</p> <p>1 presently construed, they both have a role, a role 2 that -- that is determinative so, for example, when 3 the General Assembly admits a state as a member, you 4 know, that is determinative as to the status of that 5 entity within the organization.</p> <p>6 Q Okay. So can the UN, whether it be 7 through the General Assembly or the Security Council, 8 make law in any way outside of the realm of for 9 itself?</p> <p>10 A They don't make law. I mean, here we are 11 dealing with an issue of fact. It's a question of 12 whether Palestine is accepted as a state. And when 13 you get a large number, whatever the number was on 14 that resolution, voting in the affirmative, it means 15 that those -- that that number of states are saying 16 that they consider Palestine to be a state so you 17 don't really need to talk about --</p> <p>18 Q But it's not binding, for example -- the 19 number that voted for it, that -- the fact that that 20 was the majority and that resolution passed, it's not 21 binding on any state that voted against it, right?</p> <p>22 A Well, it's not binding on the states that 23 voted against it, but when you have an overwhelming 24 expression of sentiment in favor of an entity being a 25 state, then it does -- it becomes a state. And you</p>	<p style="text-align: center;">Page 152</p> <p>1 Q The overwhelming number of states that 2 voted to accept Palestine voted to accept Palestine 3 as a nonmember observer state, correct?</p> <p>4 A Yes.</p> <p>5 Q Okay. And we have the 2011 bid that is 6 pending before the Security Council, correct?</p> <p>7 A Uh-huh.</p> <p>8 Q Have there been any other bids for 9 membership to the UN made by the government of 10 Palestine prior to September, 2011?</p> <p>11 A Not to the United Nations but there have 12 been to specialized agencies of the United Nations 13 which also requires statehood as a criterion.</p> <p>14 Q Okay. And what was the -- first of all, 15 did you cite those in your report?</p> <p>16 A I don't know if I mentioned that, but I 17 don't think I mentioned the fact that Palestine 18 applied to -- to UNESCO for membership, that's a 19 specialized agency, and that it was admitted in I 20 believe 2011 and that too is an organization that 21 requires statehood as a condition of membership.</p> <p>22 Q That was in 2011?</p> <p>23 A Yes.</p> <p>24 Q And what is that organization?</p> <p>25 A The UN Economic, Social, and Cultural</p>
<p style="text-align: center;">Page 151</p> <p>1 have here --</p> <p>2 Q How so?</p> <p>3 A Well, that's how an entity becomes a 4 state is that other states consider it to be so. And 5 here you have not only the number that voted in favor 6 of this resolution, you've got others that have 7 accorded diplomatic recognition that didn't vote in 8 favor. When you add it all together, you've got 9 about some 160 states that have -- have in a formal 10 way expressed their acceptance of Palestine and 11 that's out of 190 or so in the international 12 community.</p> <p>13 Q And they expressed their acceptance of 14 Palestine as a nonmember observer state, right?</p> <p>15 A Well, but the critical point is they 16 accepted it as a state.</p> <p>17 Q Professor Quigley, when I ask a yes or no 18 question, could you please answer it "yes" or "no"?</p> <p>19 A What is the yes or no question?</p> <p>20 Q The question is they -- that number of 21 states that you just cited to, 160, they voted to 22 accept Palestine as a nonmember observer state, 23 right?</p> <p>24 A It wouldn't be 160. I was adding another 25 group of states.</p>	<p style="text-align: center;">Page 153</p> <p>1 Organization, it's a specialized agency of the United 2 Nations.</p> <p>3 Q Okay. And how did the U.S. vote on that 4 resolution?</p> <p>5 A The U.S., the U.S. voted against.</p> <p>6 Q Going back to the 2012 General Assembly 7 resolution, how did the U.S. vote on that resolution?</p> <p>8 A In the negative.</p> <p>9 Q Okay. How many other states rejected it?</p> <p>10 A Let's see, nine, nine total.</p> <p>11 Q And how many states abstained from 12 voting?</p> <p>13 A 41.</p> <p>14 Q Okay. So is it fair to say that at least 15 50 states in the UN voted against accepting Palestine 16 as a nonmember observer state?</p> <p>17 A Yes, but that doesn't mean they don't 18 consider Palestine to be a state. Many of them were 19 of the opinion that they thought they would encourage 20 negotiations if they -- if Palestine were not given 21 this status. So the fact that they abstained or 22 voted in the negative doesn't necessarily mean that 23 they don't consider Palestine to be a state.</p> <p>24 Q Why is that?</p> <p>25 A Well, it just -- states have their own</p>

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1 reasons for voting on these things. And some of them  
 2 expressed the view that the -- that they thought it  
 3 would put more pressure on Palestine to come to terms  
 4 with Israel if it were not accorded this status at  
 5 the United Nations so their vote was not based on  
 6 a -- on their view that Palestine was not a state.

7 Q Given all of these other political  
 8 motivations or other reasons for voting on the  
 9 resolutions, the resolution itself doesn't actually  
 10 tell us whether or not Palestine is accepted as a  
 11 state, right?

12 A I disagree with that. I mean, it does  
 13 state as a fact that Palestine is a state. If the  
 14 observer mission is the observer mission of a state,  
 15 then they are saying that Palestine is a state.

16 Q Well, it does actually say that Palestine  
 17 is a nonmember observer state, correct?

18 A Yes.

19 Q So is your previous answer affected in  
 20 any way?

21 A No. I mean, that's what they were  
 22 voting. You have to have regard for the way in which  
 23 this arose. I mean, you have a mission of Palestine  
 24 at the United Nations. It's called an observer  
 25 mission. It's an observer so it has the status of

1 observer status is the same as state status in the  
 2 UN.

3 A Well --

4 MR O'TOOLE: I am going to  
 5 object. The question was based on not  
 6 the language of the resolution.

7 A You said "nonmember observer status."  
 8 It's not "member state status" so we are going around  
 9 in this --

10 Q So you are saying there is no difference  
 11 between a nonmember observer state status and a full  
 12 state status in the UN.

13 A Well, I don't accept the premise of your  
 14 question. I don't know what you mean by full -- what  
 15 was full status? Do you mean member status? It  
 16 certainly isn't considering it to be a member of the  
 17 organization.

18 Q What in a resolution that votes on  
 19 whether an entity is a nonmember observer state says  
 20 that that nonmember observer state is recognized as a  
 21 state?

22 A Well, again, I have to object to the term  
 23 of "recognize" in this context, but if the  
 24 organization is saying -- at least those who voted in  
 25 favor are saying that -- that the status of Palestine

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1 observer. But up until the time of this resolution  
 2 there hadn't been anything formal that indicated of  
 3 what Palestine is an observer. Is it an observer  
 4 of -- of a nongovernmental organization? Is it an  
 5 observer of a state? And here they are making the  
 6 specification that the observer mission is the  
 7 observer mission of a state.

8 Q Okay. So it wasn't voting to decide that  
 9 Palestine should be accepted as a state, right?

10 A Well, they are making a factual statement  
 11 that Palestine is a state.

12 Q They are making a factual statement that  
 13 Palestine is a nonmember observer state, right?

14 A Yes.

15 Q Where --

16 A It is a state, yeah.

17 Q Where in the resolution does it say that?

18 A "Decides to accord to Palestine nonmember  
 19 observer state status."

20 Q Okay. And in your opinion that's the  
 21 same as a state status?

22 A It says "state status," the word  
 23 "state" --

24 Q But it is qualified by "nonmember  
 25 observer status," so I am asking you if a nonmember

1 is that of an observer state, they are saying that it  
 2 is a state.

3 Q Okay. So in your opinion the  
 4 qualification "nonmember observer" has no meaning.

5 A It does not derogate from the fact they  
 6 are making a factual statement that they consider  
 7 Palestine to --

8 Q That's not what I am asking you. I am  
 9 asking does the qualifier "nonmember observer" in  
 10 this resolution have any meaning to you? "Yes" or  
 11 "no."

12 A Well, it has meaning in terms of what  
 13 Palestine's observer mission is at the United  
 14 Nations. It doesn't have any significance with  
 15 regard to a statement about Palestine being a state.

16 Q Okay. By the way -- we did that one  
 17 already. Strike that.

18 You mentioned of the 50 states that voted  
 19 to either reject or to abstain from voting on that  
 20 resolution, that they may have had political reasons  
 21 for those rejections or abstentions, correct?

22 A Yes.

23 Q Does that mean necessarily that those  
 24 states accept that Palestine is a state?

25 A Well, by their abstention or negative

40 (Pages 154 to 157)

<p style="text-align: right;">Page 158</p> <p>1 vote, you -- the abstention or negative vote does not 2 indicate an acceptance of Palestine as a state, 3 though some of those states accept Palestine in other 4 ways, but the vote on the vote itself, the negative 5 vote or the abstention, doesn't so indicate.</p> <p>6 Q Okay. Another way you mentioned that a 7 state that has not extended diplomatic recognition 8 can indicate that it accepts an entity as a state is 9 through actions that are inconsistent with not 10 recognizing that entity as a state, right?</p> <p>11 A Uh-huh, uh-huh.</p> <p>12 Q And specifically you mentioned with 13 respect to the United States the 2003 road map, 14 correct?</p> <p>15 A Yes.</p> <p>16 Q Okay. What is this 2003 road map?</p> <p>17 A Well, it's a document that was drafted by 18 the major powers as to steps that should be taken 19 that could resolve the overall conflict, 20 Israeli-Palestinian Conflict.</p> <p>21 Q And you say this document -- in this 22 document the United States accepts that Palestine is 23 a state.</p> <p>24 A Yes.</p> <p>25 Q Okay. Where in the document do you?</p>	<p style="text-align: right;">Page 160</p> <p>1 state because Palestine wasn't going to kind of 2 change anything. It wasn't going to become anything 3 different within -- between the end of April and June 4 of 2003.</p> <p>5 Q Okay. But this entire document, this 6 entire road map, envisions a series of possibilities, 7 right? It's creating a road map.</p> <p>8 A Yes.</p> <p>9 Q A possible road map.</p> <p>10 A Uh-huh.</p> <p>11 Q And as you say in your report, it 12 "envisions possibility" of establishing a Palestinian 13 state.</p> <p>14 A I wouldn't say of establishing a 15 Palestinian state. I would say of promoting 16 diplomatic recognition of Palestine as a state.</p> <p>17 Q Okay. So if -- if it envisions -- if 18 this road map envisions the possibility of promoting 19 diplomatic recognition of Palestine, how does that 20 mean that it is currently in that statement accepting 21 that Palestine is a state?</p> <p>22 A Well, they were saying that by -- this is 23 the end of April of 2003. They were saying that 24 we're prepared if -- if certain things happen 25 between -- over the next few weeks, we're prepared to</p>
<p style="text-align: right;">Page 159</p> <p>1 A Well, it doesn't say it in so many words, 2 but the document talks about phases that shall be 3 carried through in order to move in the direction. 4 And the first phase, this was the end of April, 2003, 5 it was concluded, and the first phase was to be 6 certain measures that would reduce tension between 7 the parties.</p> <p>8 The second phase was that -- that was to 9 begin within a few weeks after the beginning of the 10 first phase that -- that quartet members, quartet is 11 the overall group enacting this doc -- or signing 12 onto this document, that they would promote 13 international recognition of Palestinian state 14 including possibly UN membership.</p> <p>15 So they were formulating a document in 16 April of 2003 that contemplated that by June of 2003, 17 the United States along with Russia, all the European 18 powers, would be asking all states of the world to 19 recognize Palestine as a state. So as of April of 20 2003, they are saying we're prepared as of June, 21 2003, to be encouraging all states in the world to -- 22 to recognize, to accord diplomatic recognition to 23 Palestine as a state.</p> <p>24 And it seems to me they could not have 25 done that unless they thought that Palestine was a</p>	<p style="text-align: right;">Page 161</p> <p>1 encourage all states to accord diplomatic recognition 2 to Palestine. I don't see how they could have -- 3 have said that if they didn't think that what they 4 would be encouraging diplomatic recognition of was 5 not a state.</p> <p>6 Q Well, as you just said, that was 7 dependent on certain contingent --</p> <p>8 A Uh-huh.</p> <p>9 Q -- if clauses, correct?</p> <p>10 A Yes.</p> <p>11 Q Okay.</p> <p>12 A But those if clauses didn't relate to 13 Palestine status.</p> <p>14 Q Okay. What did they relate to?</p> <p>15 A This related to reduction of violence.</p> <p>16 Q Okay. So the text of the 2003 road map 17 doesn't expressly recognize -- doesn't expressly 18 accept Palestine as a state; is that right?</p> <p>19 A That would be correct.</p> <p>20 Q Okay. Similarly you said the 1993 21 Declaration of Principles between Israel and the 22 government, the Palestinian government, was another 23 indication that Israel was impliedly recognizing or 24 impliedly accepting the state of Palestine, right?</p> <p>25 A Yes.</p>

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1 Q And would the same possible reasoning  
 2 apply to that scenario that we just went through with  
 3 the 2003 road map?

4 A I'm sorry. I'm afraid I don't follow.

5 Q Just because the Israeli government says  
 6 it is possible in the future that Palestine may be  
 7 accepted as a state, does that mean that at that  
 8 moment in the present Israel is accepting Palestine  
 9 as a state?

10 A Well, the road -- the declaration itself  
 11 doesn't say that Israel is perhaps in the future  
 12 going to accept Palestine as a state. The  
 13 Declaration of Principles doesn't address the  
 14 question of statehood. It's just that by entering  
 15 into an arrangement where you would agree to discuss  
 16 borders and where you have the subsidiary documents  
 17 that were exchanged in September of 2003 of mutual  
 18 recognition, you have -- this was, as I say,  
 19 Mr. Netanyahu's view, you have an acceptance of each  
 20 other as being a state.

21 Q But that document, as you just said,  
 22 doesn't even address the question of Palestinian  
 23 statehood, correct?

24 A It does not and in particular it doesn't  
 25 say that statehood is one of the things to be

1 Q They were encouraging the parties to try  
 2 to resolve decades of fighting and violence and  
 3 struggle, correct?

4 A Yes. But not to resolve the question of  
 5 statehood, yeah.

6 Q Okay. What other sources do you cite in  
 7 your report to support your assertion that the United  
 8 States is part of the international community that  
 9 accepts Palestine as a state?

10 A Well, for the United States there would  
 11 be the road map. There would be the encouragement  
 12 of --

13 Q Other than what we've just discussed.

14 A Agreeing on borders -- I'm -- state the  
 15 question again, please.

16 Q Other than what we've just discussed what  
 17 sources do you cite in your report to support your  
 18 assertion that you -- the United States is part of  
 19 the international community that accepts Palestine as  
 20 a state?

21 A Well, I also mention the situation back  
 22 in 1932 when the Secretary of State of the United  
 23 States expressed to Britain the view of the United  
 24 States that Palestine is a state.

25 Q Did you cite to any sources more recent

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1 determined in the negotiations between the parties,  
 2 that is, that was not one of the agenda items. It  
 3 was -- I think he was saying -- it was presumed that  
 4 the two entities would be states.

5 Q Presumed by who?

6 A By both parties.

7 Q Okay. But was it presumed by the United  
 8 States?

9 A The United States was not quite a  
 10 signatory but -- but -- well, actually did sign on as  
 11 something of a -- you might say a witness to the  
 12 document. So to that extent I suppose you would say  
 13 the United States as well was accepting the notion  
 14 that Palestine was a state.

15 Q Or we're presuming that the United States  
 16 accepted it through its role as a witness?

17 A Yes, that it was signing onto a document  
 18 that presumed statehood.

19 Q It didn't sign that document, did it?

20 A No. It signed as kind of, oh, United  
 21 States and I think Russia and government. Some  
 22 others signed it as kind of -- it was a bit more than  
 23 witnesses. It was more as that they were all  
 24 encouraging the parties to do what was specified in  
 25 the document.

1 than 1932 where any member or any security who was --  
 2 any security member of the United States said that  
 3 Palestine was a state?

4 A When you say "any security member" --

5 Q What term did you use? Who was --

6 A The Secretary of State.

7 Q Secretary of State, did you cite to any  
 8 more recent document or any other statement by any  
 9 security of state -- Secretary of State, Secretary of  
 10 State, sorry, that made any type of declaration on  
 11 that Palestine was a state? Did you cite any such  
 12 sources in your report?

13 A No. I don't think there have been others  
 14 since then. I mean, it's the kind of thing that  
 15 comes into -- that occurs only when there's an  
 16 occasion that calls for it, and in the 1932 there was  
 17 an occasion because it related to tariffs that might  
 18 have been charged on United States' goods going into  
 19 Britain and so there was a reason that there needed  
 20 to be an expression by the United States.

21 Q So --

22 A So the fact that the next Secretary of  
 23 State didn't say anything comparable doesn't really  
 24 negate what was said by the earlier Secretary of  
 25 State.

42 (Pages 162 to 165)

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<p>1 Q So it's your opinion that no member -- 2 strike that.</p> <p>3 It's your opinion there has been no 4 occasion since 1932 for a member of the Executive 5 Branch of the United States government to speak on 6 whether Palestine is a state?</p> <p>7 A Well, since 1932 that particular -- the 8 occasion for stating it hasn't arisen so --</p> <p>9 Q So the answer is "no"?</p> <p>10 A But -- but I -- I would really have to 11 check before answering that one way or the other 12 because --</p> <p>13 Q You didn't check before writing this 14 report?</p> <p>15 A Well, there might be others. I mean, 16 there's a huge amount of diplomatic intercourse that 17 goes on, you know, at the UN but let -- I will say I 18 haven't found any that would -- would be in that 19 direction.</p> <p>20 Q And you didn't cite any in your report.</p> <p>21 A I did not, no.</p> <p>22 Q Okay. Are there any other sources that 23 you cite in your report to support the conclusion 24 that the United States is part of the international 25 community that accepts Palestine as a state?</p>	<p>1 passport, did the United States declare that it 2 recognized Palestine as a state?</p> <p>3 A I think so. I mean, if I come to the 4 border of the United States and I have a passport, 5 you know, signed by the Beatles, I mean, they are not 6 going to let me in.</p> <p>7 Q Okay. That was in 1923, right?</p> <p>8 A This was all during the period following 9 1923.</p> <p>10 Q Do you know how recently the United 11 States has accepted any Palestinian passport?</p> <p>12 A Let's see, well, passports would have 13 been issued for residents of Gaza after 1948 by a 14 governing authority that was under the belligerent 15 occupation of Egypt and those would have been 16 accepted. Those were issued in the name of 17 Palestine, but the governing authority by way of 18 belligerent occupation was Egypt but those would have 19 been accepted by the United States.</p> <p>20 Q Do you know they were accepted?</p> <p>21 A Yes, yeah.</p> <p>22 Q 1948?</p> <p>23 A Yeah, up until 1967.</p> <p>24 Q 1967 is when the United States started 25 rejecting Palestine passports?</p>
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<p>1 A Well, going back to the 1920s, the United 2 States was not part to the Treaty of Lausanne, but it 3 accepted the disposition that was found in the Treaty 4 of Lausanne, in particular with issues of -- of 5 citizenship, that there was a Palestine citizenship, 6 and people who had Palestine passports were allowed 7 to enter the United States on Palestine passports 8 so -- so there was acceptance by the United States in 9 that way.</p> <p>10 Q That was the 1923 treaty?</p> <p>11 A Yes.</p> <p>12 Q And the United States wasn't party to 13 that treaty, right?</p> <p>14 A It wasn't a party, but I'm saying that it 15 accepted the disposition that you found in the 1923 16 treaty.</p> <p>17 Q How so?</p> <p>18 A By its practice because one of the 19 provisions of the Treaty of Lausanne, as I mentioned, 20 was that there would be a Palestine nationality, and 21 the government of Palestine began to issue passports 22 in the name of Palestine and if someone came to -- 23 arrived at New York with one of these passports, you 24 know, they were allowed in.</p> <p>25 Q Okay. By accepting a nationality's</p>	<p>1 A No. It would be when they stopped being 2 issued. I don't -- I will acknowledge I don't know 3 for sure how late those were accepted or whether they 4 are still being accepted.</p> <p>5 Q Okay. Other than what we've already 6 discussed, so there's no need to repeat the sources 7 we've already gone through, do you cite any other 8 authority in your report to support your position 9 that the United States accepts Palestine as a state?</p> <p>10 A I think we've gone over the -- those 11 instances that I cite.</p> <p>12 MS. MACHNES: Okay. I 13 think we can take a break now. (Recess taken.)</p> <p>14 Q Professor Quigley, other than Palestine 15 are you aware of any other entities that have a 16 nonmember observer state status in the United 17 Nations?</p> <p>18 A The Vatican.</p> <p>19 Q That's the Holy See, right?</p> <p>20 A Yes.</p> <p>21 Q Does the fact that the Holy See has 22 nonmember observer state status mean that the 23 international community recognized the Holy See as a 24 state -- or accepts?</p>

<p style="text-align: right;">Page 170</p> <p>1 A Thank you.      2 Q Accepts the Holy See as a state?      3 A Yes.      4 Q So you believe that the international      5 community accepts the Holy See as a state?      6 A Yes.      7 Q Are you aware of any other entities that      8 have nonmember observer state status?      9 A No.      10 Q And is that in your report?      11 A I don't think I mentioned that -- these      12 facts in the report.      13 Q Okay. I mean, specifically the number of      14 entities -- or number of entities in the UN that have      15 nonmember observer status.      16 A No. I didn't consider that relevant.      17 Q Okay. It's your position that -- that      18 acceptance of a state as being a state is the      19 determinative factor based on state practice, right?      20 A Yes.      21 Q And you say that the practice of states      22 is the most important way that we can tell that      23 acceptance is the determinative analysis of statehood      24 under international law, right?      25 A Yes.</p>	<p style="text-align: right;">Page 172</p> <p>1 other types of analyses on other scholars; is that      2 what you're saying?      3 A Well, I base it on my analysis of how      4 states actually operate and on how other scholars      5 analyze how states operate.      6 Q Did you consider other scholars that      7 disagree with your prioritization of how to analyze      8 statehood?      9 A I've seen some. I haven't analyzed -- or      10 seen all of them so I don't know the totality of      11 them.      12 Q Did you cite to any in your report?      13 A I didn't, no.      14 Q Okay. Other than James Crawford do you      15 have any -- can you list any others?      16 A There really haven't been others who have      17 done extensive analysis. I mean, you find lawyers      18 that have stated an opinion on this issue but -- but      19 not many that have done what I would call extensive      20 analysis.      21 Q Where have lawyers stated their opinion?      22 A I've seen articles by authors whose names      23 I don't recall.      24 Q Okay. And those aren't cited in your      25 report, right?</p>
<p style="text-align: right;">Page 171</p> <p>1 Q And that the practice of states is more      2 important than the Montevideo factors, for example?      3 A Well, the Montevideo factors are factors      4 that states can take into account, but it's      5 ultimately states that take those into account.      6 Q Okay. And that's your opinion, right?      7 A Yes.      8 Q Is that -- is that an established way of      9 prioritizing the analysis of statehood under      10 international law?      11 A I think it is, yes.      12 Q How do you -- based on what?      13 A That's what you find, you know, others      14 saying. Some may differ about how extensive the      15 practice has to be but this is the analysis that you      16 generally find.      17 Q Who are the others that you are referring      18 to?      19 A Oh, there would be James Crawford who has      20 written a book on states that would go through this.      21 He probably has a higher standard than I do for      22 what -- how much the acceptance has to be, but it's a      23 matter of degree. It's not a huge difference.      24 Q So you're basing the pri -- so you're      25 basing this prioritization of state practice over</p>	<p style="text-align: right;">Page 173</p> <p>1 A No.      2 Q So earlier we discussed all of the      3 sources that you cited to support your assertion that      4 the United States implicitly recognizes or accepts      5 Palestine as a state, right?      6 A Yes.      7 Q And coming to this conclusion did you      8 consider the modern position of the United States      9 Executive Branch on whether Palestine is a state?      10 A Yes.      11 Q Do you cite to that in your report?      12 A No.      13 Q So what other sources that you didn't      14 cite in your report from the Executive Branch of the      15 United States tell you that the United States tacitly      16 recognizes or accepts Palestine as a state?      17 A When I say I haven't cited, I mean, we      18 did talk about the road map which to me is an      19 indication by the United States that it does accept      20 Palestine as a state and that's -- that's very      21 recent. That's within the last 10 years.      22 Q And we established that that document      23 contemplated the possibility of Palestine being      24 accepted as a state. It did not explicitly accept      25 Palestine as a state, right?</p>

<p style="text-align: right;">Page 174</p> <p>1 A It implantly accepted Palestine as a 2 state and looked to the future to promoting 3 diplomatic recognition of what was assumed in the 4 document to be a state, namely, Palestine. 5 Q Okay. So we established that it's your 6 opinion that document implantly accepts Palestine as 7 a state. 8 A That's right. 9 Q Other than that did you consider other 10 sources from the Executive Branch of the United 11 States that aren't in your report and that we haven't 12 already discussed where the Executive Branch of the 13 United States declares its position on Palestine as 14 being a state? 15 A The only one I can think of would be the 16 statement made by the U.S. Representative after the 17 vote in the General Assembly where she said Palestine 18 was not a state or that -- she didn't say Palestine 19 was not a state. She said the resolution didn't 20 indicate that. That was her view. But that's the 21 only one I can think of and I did not cite that. 22 Q Do you know who -- do you know who that 23 U.S. Representative was? 24 A Ms. Rice. 25 Q Okay. And she made that statement after</p>	<p style="text-align: right;">Page 176</p> <p>1 doesn't necessarily mean that the United States 2 doesn't accept Palestine as a state. 3 Q Okay. So it's your position that the 4 United States' actions are consistent only with 5 accepting that Palestine is a state? 6 A Yes. 7 Q Okay. And it's your opinion that a U.S. 8 Representative's expression as recently as 2012 that 9 Palestine was not accepted as a state is not 10 important enough to include in your report about 11 whether Palestine is a state for an expert report 12 that is pending before a United States court? 13 A Well, I mean, the issue is the acceptance 14 by states generally. 15 Q That's the issue for -- 16 A The fact that you have an expression by 17 the United States, whereas, I say that expression is 18 inconsistent with the practice, I mean, I don't know, 19 you know, what -- you know, whether you can take that 20 as any -- anything of great moment. 21 Q Okay. I think you also just said that 22 U.S. courts are supposed to decide under 23 international law; is that correct? 24 A Yes, uh-huh. 25 Q Do you recognize the difference between</p>
<p style="text-align: right;">Page 175</p> <p>1 the 2012 UN General Assembly resolution? 2 A Yes, uh-huh. 3 Q Why didn't you cite that statement in 4 your report? 5 A Because it's so overwhelming what you get 6 from the way this was handled at the General 7 Assembly, that that, you know, simply isn't 8 significant. 9 Q Well, you are aware that this case is 10 pending before a United States court, right? 11 A Yes. 12 Q And that the United States is governed by 13 its own positions on these things, right? 14 A Yes. But a court is supposed to decide 15 an issue of this on the basis of -- of international 16 law. I mean, it's not supposed to decide solely 17 based on what the U.S. government says and what -- 18 what a particular official says on a particular day, 19 you know, isn't necessarily definitive as to whether 20 or not the United States accepts Palestine as a 21 state. 22 I mean, if by its practice if what it 23 does, you know, is -- is consistent only with a view 24 that Palestine is a state but then somebody gets up 25 and says, oh, it's not a state, you know, that</p>	<p style="text-align: right;">Page 177</p> <p>1 international law and domestic law? 2 A Yes. 3 Q And you think that U.S. courts should be 4 guided by international law -- 5 A Yes. 6 Q -- as opposed to domestic law? 7 A There's no opposed domestic law but 8 international law has been found by the U.S. Supreme 9 Court to be something to be applied by the courts of 10 the United States. It goes back to the Paquete 11 Habana case in the early 20th Century in the U.S. 12 Supreme Court. It's been the position of the U.S. 13 Supreme Court from the beginning of the republic. 14 Q What happens if U.S. domestic law 15 conflicts with international law? 16 A Well, I mean, there isn't any conflicting 17 domestic law on -- on this point. But the -- the 18 courts are supposed to apply international law and, 19 in fact, in that -- the case that I mentioned in the 20 U.S. Supreme Court there was conflicting U.S. law, 21 and the court said that it was overridden by 22 international law. 23 Q Okay. In -- in your report did you 24 consider the position of the United States 25 Legislative Branch on whether the United States</p>

<p>1 to cite even if it required distinguishing?      2 A I mean, I thought it was not relevant to      3 my coming to an opinion as to Palestine's statehood.      4 Q Are you familiar with a case call Knox v.      5 Palestine -- Palestine Libration Organization?      6 A I've heard of it, but I don't know      7 anything about it.      8 Q Okay. I will represent to you that this      9 is a case from the Southern District of New York that      10 was decided in 2004. And I take it you did not rely      11 on that case in writing your expert report in this      12 case, correct?      13 A Correct.      14 Q Are you aware that in that case the court      15 expressly disavowed your opinion on the issue of      16 Palestinian statehood?      17 A I think someone informed me that there      18 was mention of me in that decision, but I haven't      19 looked at it in detail.      20 Q Do you know how the court came to -- came      21 upon your opinion regarding Palestine in the first      22 instance?      23 A I published articles.      24 Q But that wasn't one of the cases that you      25 were an expert for that you --</p>	<p>1 or about what -- how the court should decide issues      2 of international law except to the extent I am      3 providing a factual basis for them to apply the      4 principles of international law.      5 And if one looks at the international      6 community, one finds this acceptance of Palestine and      7 I think that's what's key and if I am asked to give      8 an opinion that, you know, isn't a book length where      9 I might discuss other people that disagree, you know,      10 I think what I've written is adequate.      11 Q You don't think in providing the      12 framework for a court to apply your factual analysis,      13 as you say it, it's important to point out binding      14 law that takes the opposite position of your opinion?      15 A Well, the fact that they've taken a      16 different approach in the past, you know, isn't      17 really relevant to the approach that I think should      18 be taken. My report is oriented towards what -- the      19 approach that I think needs to be taken.      20 Q Okay. Let me read you -- I am going to      21 read you another quote from the Knox case; and,      22 again, I want you to tell me if you disagree with      23 this statement. "Even absent any intervention from      24 the Executive Branch, the Court notes that it's      25 granting the im" -- "that its granting the immunities</p>
<p>Page 183</p> <p>1 A No.      2 Q Okay. I am going to read you a statement      3 from the court's opinion in Knox, and I want you to      4 tell me if you disagree with it. "The Court      5 disagrees with the Defendants and Professor Quigley      6 and is persuaded instead by the weight of judicial      7 and scholarly authority pronouncing that for      8 statehood purposes the PA and PLO do not meet the      9 control requirement." Do you disagree with that      10 statement?      11 A I disagree with the court's, yes,      12 conclusion, yes.      13 Q Okay. And despite the fact that you knew      14 there was this court opinion out there that expressly      15 disavowed your opinion, you didn't think it was      16 important enough to cite in your report, right?      17 A I didn't think it was relevant to my      18 coming to a conclusion as to whether Palestine is a      19 state.      20 Q And you didn't think it was important      21 when you were providing an expert report for a case      22 that is pending in a U.S. court.      23 A I'm -- I'm giving an opinion about facts,      24 about the facts in the international community. What      25 I'm not giving an opinion about is international law</p>	<p>Page 185</p> <p>1 Defendants seek would, in fact, conflict with      2 declared U.S. public policy regarding the Defendants.      3 Though the PLO has declared Palestine's statehood and      4 several other nations have apparently recognized that      5 status, the United States has yet to recognize a      6 Palestinian state."      7 Did you take that into consideration when      8 you were writing your report?      9 A Well, the statement is the United States      10 has yet to recognize Palestine. That means      11 diplomatic recognition. That's not the totality of      12 the question of statehood.      13 Q So you think the Knox case is consistent      14 with your --      15 A Well, it's clear the United States has      16 not granted diplomatic recognition to Palestine.      17 That's all that's being said there. As a matter of      18 fact, I don't disagree with that, but I don't think I      19 needed to -- to say that.      20 Q And, again, even if -- even if it's your      21 position that the court in Knox is saying something      22 different that -- that touches on the difference      23 between acceptance and diplomatic recognition, even      24 if we take that -- even if we accept that, you didn't      25 think that this case was important enough to include</p>

<p style="text-align: right;">Page 186</p> <p>1 in your expert report when it's binding U.S. law?      2 A I mean, if the court is saying it's going      3 to find that Palestine is a state because the United      4 States does accord it diplomatic recognition, you      5 know, that doesn't really make much sense because      6 that's not definitive on the view of the United      7 States. Maybe the court is -- has a misunderstanding      8 of the significance of diplomatic recognition. I      9 mean, I can't, you know -- I didn't in my report go      10 over all of the bad analysis that you find from --      11 from courts or from other writers.      12 Q Well, you know that -- you know that      13 courts are bound by their own precedent, right?      14 We've established that, right?      15 MR O'TOOLE: I am going to      16 object. Which courts? Are we talking      17 about Southern District of New York?      18 Q We know the Southern District of New York      19 is bound by its own precedents.      20 MR O'TOOLE: So one judge      21 binds all of them? I want to make sure      22 the question accurately --      23 Q You can answer my question.      24 MR O'TOOLE: -- represents      25 the facts.</p>	<p style="text-align: right;">Page 188</p> <p>1 Palestine by the international community as a state.      2 Q Okay. Are you -- last one, I promise,      3 are you familiar with a case called Ungar versus the      4 Palestine Liberation Organization?      5 A Yes.      6 Q And that was a case decided by the First      7 Circuit Court of Appeals, correct?      8 A My recollection is vague on which      9 circuit.      10 Q I'll represent to you that it's decided      11 by the First Circuit in 1990 -- rather 2005. You did      12 not rely on that case in writing your expert report      13 either, correct?      14 A Correct.      15 Q Are you familiar with the court and      16 Ungar's view on the effect of UN resolutions on      17 United States law?      18 A I don't recall what the court might have      19 said on that point.      20 Q I will read you a statement from that      21 decision. The court said, "To be sure, the      22 Defendants point proudly to the UN's 1974 recognition      23 of the PLO. We do not minimize the political      24 significance of that event. The fact remains,      25 however, that neither political recognition of the</p>
<p style="text-align: right;">Page 187</p> <p>1 Q You know that the Southern District of      2 New York, the judges of the Southern District of New      3 York, are bound by the other judges of the Southern      4 District of New York's opinions, correct?      5 MR O'TOOLE: I am going to      6 object because I am not sure that's      7 right.      8 A I don't know that to be true.      9 Q Do you know -- do you know that the      10 Southern District of New York at the least is bound      11 by the Second Circuit Court of Appeals' decisions?      12 A Yes.      13 Q Okay. And you don't think that given      14 your position that the Knox case was decided      15 incorrectly wasn't important to point out in your      16 report that there was this reason that they got it      17 wrong and they should instead decide according to      18 your view?      19 A I was asked to do a report on the status      20 of Palestine and whether Palestine is a state. I      21 wasn't asked necessarily to review all of the      22 opinions to the contrary which would have required a      23 much more extensive exercise than what I was engaged      24 in. I included in my report those issues and facts      25 that I thought were relevant to the acceptance of</p>	<p style="text-align: right;">Page 189</p> <p>1 PLO nor the United Nations support for      2 self-government" -- "self-governance is sufficient to      3 signify that the Restatement's conditions for      4 statehood have been met." Do you agree with that      5 statement?      6 A No.      7 Q And you didn't think it was important to      8 include in your report.      9 A No. It's another instance of bad      10 analysis that goes against my opinion, but the court      11 shouldn't have been referring to Montevideo, and it      12 incorrectly talks about the role of the United      13 Nations. It doesn't talk about the -- well, of      14 course, they couldn't have talked about the 2012      15 resolution, but the resolutions reflect views of      16 individual states and that's what's important about      17 UN resolutions. It isn't so much their -- their      18 effect. I think there is reference there to --      19 Q The United States is an individual state,      20 right?      21 A Yes.      22 Q So to the extent that the United States      23 is part of the United Nations, their position is      24 relevant.      25 A Well, the position of all states is</p>

<p style="text-align: right;">Page 190</p> <p>1 relevant, but if you have a few states that take a 2 contrary position, that doesn't negate the fact of 3 statehood. And as I say, the position of the United 4 States says -- depends on whether you want to listen 5 to what I would call political pronouncements on the 6 one hand or practical action by the United States 7 which I think does reflect an acceptance of Palestine 8 as a state.</p> <p>9 Q So do you think that the court should 10 have been guided by UN General Assembly resolutions 11 as opposed to the United States government's 12 position?</p> <p>13 A Well, I think it should have looked at 14 the issue of the status of Palestine on the basis 15 of -- of international law which is applicable in 16 U.S. courts. It could consider the views of the 17 United States as being significant to the extent that 18 the views of any other state are significant. But it 19 should not have been -- have relied so heavily on the 20 fact that the United States hasn't granted diplomatic 21 recognition which doesn't even mean the United States 22 doesn't accept Palestine as a state.</p> <p>23 Q Do you think that this debate or this 24 way -- this way in which you distinguish Ungar was 25 relevant to your expert report in this case?</p>	<p style="text-align: right;">Page 192</p> <p>1 is not recognized by the United States does not meet 2 the definition of a state under United States and 3 international law and, hence, does not constitute a 4 foreign state for FSIA purposes." Did you consider 5 that decision in your expert report?</p> <p>6 A No. Again, I think it's simply incorrect 7 and would not lead me to come to any different 8 opinion, again, the referring to recognition as if 9 recognition is key. And they are referring to the 10 definition of state under U.S. law. There is no 11 definition of state under U.S. law. The definition 12 of state comes out of international law. Maybe 13 that's what they mean and they are just being -- the 14 court is being imprecise.</p> <p>15 Q That is your opinion as to how to 16 distinguish this case, correct, or how to cast doubt 17 upon this case, correct?</p> <p>18 A It's why I didn't -- wouldn't have 19 considered it to lead me to come to a contrary 20 opinion.</p> <p>21 Q "Yes" or "no," that was your opinion as 22 to why this case was decided incorrectly, right?</p> <p>23 A Yes, yes.</p> <p>24 Q And this is a decision that has come down 25 in the precise matter you are opining on, correct?</p>
<p style="text-align: right;">Page 191</p> <p>1 A Well, I don't think it was necessary for 2 my conclusion to explain why Palestine is a state to 3 be refuting all, you know, contrary analyses.</p> <p>4 Q Even if that contrary analysis is binding 5 United States law?</p> <p>6 A I do not accept your position that it's 7 binding United States law. This is the Second 8 Circuit?</p> <p>9 Q First Circuit. And we are in a district 10 court, and the First Circuit is an appellate court.</p> <p>11 A And there has been a great deal of 12 international practice since the time of Ungar so 13 there's no need for a U.S. district court in the 14 First Circuit to follow the Ungar approach without 15 question, I mean, because it's a question of 16 international practice, and they would have to take 17 into account the totality of that practice.</p> <p>18 Q Okay. Have you -- are you familiar with 19 the Southern District of New York's 2008 decision in 20 the present case on which you are opining?</p> <p>21 A No.</p> <p>22 Q No. I will read you a sentence from that 23 case which again was -- I will represent to you was a 24 case decided in the Southern District of New York in 25 2008 in the Sokolow case. "Palestine whose statehood</p>	<p style="text-align: right;">Page 193</p> <p>1 A Yes. I am being asked for my opinion. I 2 am not asking what the court has already said.</p> <p>3 Q But in providing your expert opinion for 4 a case on which there was a decision that was 5 contrary to your opinion, you didn't think it was 6 important to present the exact type of analysis that 7 you just said here to distinguish this decision?</p> <p>8 A Well, I think what I have said in my 9 report explains why -- the reasoning that's reflected 10 in what you read to me is not correct. I didn't need 11 to mention it, you know, by page citation 12 necessarily.</p> <p>13 Q And you weren't -- you weren't familiar 14 with this decision while you were writing your 15 report, correct?</p> <p>16 A No, no. But I -- but I think I -- what 17 I've said is an adequate recitation of that.</p> <p>18 Q So we talked about, for example, the 2003 19 performance-based road map for -- to a permanent 20 two-state solution to the Israeli-Palestinian 21 Conflict, right?</p> <p>22 A Yes.</p> <p>23 Q And that obviously by its name was a 24 source from 2003, right?</p> <p>25 A Yes.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q That was before the 2004 Knox decision, 2 correct?</p> <p>3 A Yes. I'm taking the date of it from you, 4 yes.</p> <p>5 Q And that was before the 2005 Ungar 6 decision, right?</p> <p>7 A Again, I'm taking your date.</p> <p>8 Q And that was before the 2008 decision in 9 this matter, correct?</p> <p>10 A Yes.</p> <p>11 Q But you didn't rely on any of those cases 12 in coming to the conclusions that you did in your 13 expert report, right?</p> <p>14 A Well, I mean, I referred to the 2003 road 15 map, the fact that maybe nobody cited that to the 16 court in those cases, the court didn't take it into 17 account --</p> <p>18 Q I am asking if you cited to any of these 19 cases which were more recent assertions made by the 20 United States -- a branch of the United States 21 government. I am asking whether you took those 22 sources into consideration in your report as opposed 23 to a 2003 document that impliantly accepted Palestine 24 as a state.</p> <p>25 A No. The 2003 document shows the United</p>	<p style="text-align: right;">Page 196</p> <p>1 Q And the United States voted against the 2 General Assembly resolution of 2012, right?</p> <p>3 A That's correct but irrelevant, yes.</p> <p>4 MS. MACHNES: Okay, okay.</p> <p>5 If we could just take a 2- or 3-minute 6 break.</p> <p>7 MR O'TOOLE: That's fine.</p> <p>8 MS. MACHNES: We might be 9 able to wrap up shortly.</p> <p>10 (Recess taken.)</p> <p>11 Q Professor Quigley, do you know how many 12 countries have not granted Palestine diplomatic 13 recognition?</p> <p>14 A There are about 190 depending on how you 15 count exactly 190 countries. There are approximately 16 130 that have granted diplomatic recognition so that 17 would be 60 that have not.</p> <p>18 Q Okay. And the 130 you are getting from 19 the 2012 General Assembly resolution?</p> <p>20 A No, no. That's not related to the 21 General Assembly resolution. That's -- that's 22 related to diplomatic practice, the establishment of 23 diplomatic relations, Palestine diplomatic missions 24 in different countries.</p> <p>25 Q So that's based on some independent</p>
<p style="text-align: right;">Page 195</p> <p>1 States accepts Palestine as a state. The subsequent 2 cases are simply badly reasoned opinions on the 3 subject.</p> <p>4 Q Okay. Did you cite any source in your 5 report that takes the opposite view of your 6 conclusions?</p> <p>7 A I did not.</p> <p>8 Q Why?</p> <p>9 A I took it as my task to make an argument 10 in support of the proposition that I believed. My 11 conclusion is that Palestine is a state, and I 12 presented the evidence showing that. I mean, I could 13 have written a much longer report that goes into, you 14 know, scholars X, Y, and Z but that was not what it's 15 doing.</p> <p>16 Q But you acknowledge that there are other 17 scholars that disagree with your assertion?</p> <p>18 A Certainly.</p> <p>19 Q And you acknowledge there are other 20 United States law that is binding on the Southern 21 District, at least the Second Circuit case that 22 disagree with your opinion?</p> <p>23 A Yes, except to the extent when you say 24 it's binding all these cases that were decided, of 25 course, before the General Assembly action of 2012.</p>	<p style="text-align: right;">Page 197</p> <p>1 analysis that you have done?</p> <p>2 A Yes, yes.</p> <p>3 Q Okay. And what does that analysis 4 consist of?</p> <p>5 A It's based on looking at the practice 6 of -- of states with respect to granting diplomatic 7 recognition to -- to Palestine.</p> <p>8 Q So those 130, have they expressly granted 9 diplomatic recognition or have some of them 10 impliantly granted --</p> <p>11 A Those are all fairly expressed. There 12 may be some fudging or some room for difference of 13 opinion on some of them which is why I'm not prepared 14 to state a hard and fast number, but it's -- it's 15 close to that number of 130.</p> <p>16 Q How many, approximately, do you think may 17 fall into the fudging category?</p> <p>18 A Well, I mean, most of them have 19 diplomatic relations in the way that you have 20 diplomatic relations with states. That's fairly 21 solid so a few of them may have made statements that 22 are a bit murky but it would -- the number that's 23 solid is rather close to the 130, I think.</p> <p>24 MS. MACHNES: Okay. I 25 think we are finished.</p>

<p style="text-align: right;">Page 198</p> <p>1           MR O'TOOLE: I think I have 2        very few questions.</p> <p>3        EXAMINATION 4        BY MR. O'TOOLE:</p> <p>5        Q So earlier, Professor Quigley, you were 6        asked about the control by the Palestinian government 7        over the territory of Palestine and the West Bank 8        during the period from 2000 -- 2000 to 2004. Do you 9        recall that?</p> <p>10      A Yes.</p> <p>11      Q And I believe you testified that the 12     Palestinian government provided various services 13     during that timeframe such as police, they arrested 14     people, that there were court systems going on. Do 15     you recall that testimony?</p> <p>16      A Yes.</p> <p>17      Q Now, when you were talking about the 2000 18     to 2004 time period, were there things going on at 19     that point that would have -- would affect the 20     control that the government might have had in that 21     time period?</p> <p>22      A Well, of course, as the occupation of 23     Israel which limited the extent of control.</p> <p>24      Q And I'm thinking also in that time period 25     are you familiar with an operation that's been</p>	<p style="text-align: right;">Page 200</p> <p>1        Q And in other cities in the West Bank as 2        well or no?</p> <p>3        A In other cities, yeah, Jenin was the most 4        prominent.</p> <p>5        Q And would that affect your description of 6        the amount of Palestinian control over the 7        territories during that time period?</p> <p>8        A Well, that's a reflection of the fact 9        that the control was limited to Palestine's 10      government, didn't have the ability to prevent the 11      Israeli armed forces from coming into the territory 12      that was supposedly under the control of the PA.</p> <p>13      Q Now, did those facts in terms of the 14      insurgents have any effect on your opinion as to 15      Palestinian statehood?</p> <p>16      A Well, there is overall belligerent 17      occupation here. That means that there -- there 18      isn't total control and those incidents are just a -- 19      an example of how that worked out in practice.</p> <p>20      Q Turning to a different topic now, I 21      think -- I believe you testified that the United 22      States does not diplomatically recognize Palestine; 23      is that correct?</p> <p>24      A Yes.</p> <p>25      Q And does that affect your opinion as to</p>
<p style="text-align: right;">Page 199</p> <p>1        referred to as Operation Defensive Shield?</p> <p>2      A No.</p> <p>3      Q Well, let --</p> <p>4        MS. MACHNES: Objection.</p> <p>5        MR O'TOOLE: What's the 6        basis?</p> <p>7        MS. MACHNES: Leading the 8        witness.</p> <p>9        MR O'TOOLE: I was asking 10      him if he is familiar with Operation 11      Defensive Shield. He said no.</p> <p>12      MS. MACHNES: He said no.</p> <p>13      MR O'TOOLE: Right, so I'm 14      asking him now if he is familiar with 15      various insurgents by the Israeli 16      Defense Forces into the West Bank 17      between 2000 and 2004.</p> <p>18      A Oh, yes, yes.</p> <p>19      Q Can you just explain the extent of those 20      insurgents?</p> <p>21      A Well, yeah. This was a period when there 22      were insurgents, in particular the most significant 23      was in the town of Jenin in the West Bank that -- 24      where the Israel Defense Forces engaged in rather 25      extensive military operations.</p>	<p style="text-align: right;">Page 201</p> <p>1        whether Palestine is a state?</p> <p>2      A Well, if the United States were to accord 3        diplomatic recognition, it would mean that the United 4        States was part of this what I find the international 5        consensus, so the view of the United States is not 6        definitive or determinative on the issue of whether 7        Palestine is a state.</p> <p>8      Q Well, and I was going to ask for other 9        examples where there might be an unrecognized state. 10      Do you have any other examples of that?</p> <p>11      A Well, I mean, there are, you know, such 12      instances. The United States didn't recognize the 13      Soviet Union as a state until the Roosevelt 14      Administration in 1933, but it had been functioning 15      since the time of the revolution in Russia and was 16      generally accepted as a state by the European powers, 17      by other states of the world so you did have a 18      situation of -- for that time period of 19      nonrecognition by the United States of an entity that 20      I think it's fair to say was -- was accepted as a 21      state at that point in the international community.</p> <p>22      MR O'TOOLE: No further 23      questions.</p> <p>24      MS. MACHNES: Done. (Time Noted: 3:18 p.m.)</p>